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IN THE

Supreme Court of the United States

October Term, 2004

BRIAN SCHAFFER, A MINOR, BY HIS PARENTS AND NEXT FRIENDS, JOCELYN AND MARTIN SCHAFFER, *et al.*,

Petitioners,

v.

JERRY WEAST, SUPERINTENDENT, MONTGOMERY COUNTY PUBLIC SCHOOLS, *et al.*,

Respondents.

On Writ of *Certiorari* to the United States Court of Appeals for the Fourth Circuit

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BRIEF OF *AMICUS CURIAE* NATIONAL SCHOOL BOARDS ASSOCIATION IN SUPPORT OF RESPONDENTS

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20 U.S.C. § 1431(a) and (b) (2005) 15

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Other Sources

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FISCHER, SCHIMMEL & STELLMAN, TEACHERS AND
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NSBA, "PRIORITY ISSUE: FEDERAL FUNDING FOR
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INTEREST OF *AMICUS CURIAE*[1]

The National School Boards Association ("NSBA") is a federation of state associations of school boards from throughout the United States, the Hawai'i State Board of Education, and the boards of education of the District of Columbia and the U.S. Virgin Islands. NSBA represents the nation's 95,000 school board members who, in turn, govern the nearly 15,000 local school districts that serve more than 46.5 million public school students, or approximately 90 percent of the elementary and secondary students in the nation. Recognizing that all children, including those with disabilities, have a right to be provided with free appropriate public education, NSBA has consistently supported the rights of disabled children, while at the same time being painfully cognizant of the significant funds that its members spend each and every year, above and beyond that provided by the Federal Government,[2] for the education of those children—and of the hard choices that this forces among services to children, including among disabled children.

Each year NSBA members participate in over 3,000 due process hearings conducted by local and state hearing officers pursuant to the federal Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq.* (2005) ("IDEA"),

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[1] This brief is filed with consent of both parties. No counsel for a party authored this brief in whole or in part. No person or entity, other than the *Amicus*, its members, or its counsel made a monetary contribution for the preparation or submission of this brief.

[2] While the Federal Government committed to funding 40 percent of the cost per pupil for special education when it first enacted the predecessor statute to the IDEA in 1974, thirty years later it still funds less than 20 percent of those costs, creating a cumulative funding gap of more than $4.3 billion for the last four fiscal years. NSBA, "Priority Issue: Federal Funding for Education" (Jan. 2005), *available at* www.nsba.org/site/docs/35100/ 35033. pdf (visited May 31, 2005).

requiring the expenditure of millions of dollars and thousands of hours of professional time that otherwise could be devoted to the education of America's children. Millions of children in this country are educated according to individualized education programs ("IEPs") created pursuant to the IDEA in what is intended to be a collaborative effort between parents or guardians and school district employees, with the goal of ensuring educational progress and achievement even for the most profoundly disabled children.

The issue presented in this case—the assignment of the burden of proof in due process hearings brought under the IDEA—is of manifest importance to school boards. Usually such hearings arise from parental disagreement with school personnel over the appropriateness of an IEP, the adequacy of special education services, or educational placement decisions. NSBA believes that the Fourth Circuit properly assigned the burden of proof to the moving party—*i.e.*, the party seeking to challenge the IEP, level of services, or educational placement—and that automatic placement of the burden of proof on public school districts in all cases would result in needless proliferation of costs, prolongation and greater uncertainty as to the outcome of due process hearings, and disincentives for parents to work collaboratively with schools in crafting educational programs for disabled students. This, in turn, would increase the cost to school boards of the already substantially underfunded mandate that is today's IDEA, placing even greater demands on public schools' scarce resources and jeopardizing both special and regular education programs and the children they serve.

SUMMARY OF ARGUMENT

1. In the absence of any express statutory guidance with respect to the burden of proof in due process hearings brought under the IDEA, Congress should be understood to

allocate the burden of proof in precisely the same manner that such burden is assigned in other administrative cases. This means that the moving party, *i.e.*, the party seeking to challenge or change the *status quo*, should bear the burden of persuasion and the burden of proof. This is consistent with the IDEA's statutory scheme, with Congress's assignment of the burden of proof elsewhere in the IDEA, and with longstanding and prevalent administrative law jurisprudence.

2. Courts traditionally have adopted two fundamental principles in dealing with governmental and administrative agencies, including boards of education: (1) the presumption of correctness, *i.e.*, that public agencies act lawfully and correctly, unless proven otherwise; and (2) deference in matters concerning their particular expertise. Teachers and other dedicated school-based professionals who, along with parents, devise IEPs for disabled children should be entitled to the presumption that they have complied with the law and acted in the best interests of the children entrusted to their care—not that they are "guilty until proven innocent."

3. Of all federal statutes creating citizens' rights, the IDEA already contains perhaps the most comprehensive constellation of protections for its intended beneficiaries: children with disabilities and their parents. These include an extensive list of procedural safeguards that must be shared with parents at the commencement of each step of the process of developing and challenging an IEP. This is intended to guarantee that parents are equal partners with their schools in planning for their children's education. Moreover, school systems are obligated by federal law to provide parents with the complete record of their children's education, while the IDEA prescribes that the school system must inform parents five business days before a due process hearing begins of the evidence its intends to rely upon and the witnesses it intends to call. Parents are privy to the same, if not greater, information about their children's education.

Thus, there is no compelling policy justification for departing from the traditional obligation of the moving party, here the parents, to bear the burden of proof in seeking to challenge an IEP as having failed to provide their child with a free appropriate public education. To the contrary, shifting that burden to school boards would encourage parents and their attorneys to challenge even valid IEPs. Should the school system fail to meet this burden, parents potentially could achieve, without producing any evidence whatsoever, a court-ordered private placement at public expense, expensive services not necessarily required by the IDEA, and—a weighty factor that unavoidably influences IDEA decisions in ways bearing little or no relationship to actual educational outcomes—attorneys' fees. Congress's encouragement of mediation, as reflected in 20 U.S.C. § 1415(e) (2005) of the IDEA, would be undermined and due process hearings needlessly prolonged as school systems compelled to justify every single component of an IEP produce teachers, service providers, and other school-based professionals before the independent hearing officer in each and every case.

With the burden of proof placed on school systems rather than on parents challenging the outcome of the IEP process, the IEP process is more prone to become a discovery tool rather than a collaborative vehicle for preparing appropriate educational programs for disabled children. Due process hearings, in turn, could become no less than "super-IEP meetings," where parents for the first time would offer concerns and suggestions regarding their child's educational program or placement. The result would be a significant increase in costs to public school systems caused by the proliferation and prolongation of hearings, a greater risk of attorneys' fee awards to parents of special education students, and a more confrontational, rather than collaborative, atmosphere in such cases. Under the burden of proof scheme urged by the Petitioners, schools would be

required regularly to remove teachers and other school-based professionals from the classroom, where they are most needed, in order to place them on the witness stand to justify each component of often detailed and complicated IEPs. This would compromise the education of children in an era of greater accountability and the challenge of the No Child Left Behind Act, 20 U.S.C. § 6301 *et seq.* (2005).

Keeping the burden of proof where it belongs—on the moving party, here the parents who wish to dispute a particular IEP or placement decision[3]—would ensure that parents thoroughly identify, and support with relevant evidence, the precise basis upon which they have challenged the IEP, rather than obligating school systems to guess, at the outset of a due process hearing, just what it is the parents really wish to contest. The alternative is to leave school professionals at the mercy of hearing officers who may or may not permit them to offer evidence, by way of rebuttal, once they have finally heard the parents' case after having been able to present only general support for the IEP during the presentation of the school system's case-in-chief. The stakes are high whichever way the Court resolves this issue, given the over 11,000 requests for due process hearings that are made each year[4] and their resultant cost to public school

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[3] Not all due process hearings are initiated by parents. School districts occasionally pursue due process hearings where, for instance, the district wishes to resolve the appropriateness of a public placement proposal in the face of the unilateral withdrawal of a child by its parents from public school and placement in a private school. *Yates v. Charles County Bd. of Educ.*, 212 F. Supp. 2d 470 (D. Md. 2002); *Krista P. v. Manhattan School Dist.*, 255 F. Supp. 2d 873 (N.D. Ill. 2003). Even under traditional evidentiary principles as adopted by the Fourth Circuit below, the burden of proof in such cases would rest with the district. NSBA's position is that when the school system initiates the hearing, the burden of proof should be placed on the school system as the moving party.

[4] GAO Report No. GAO-03-897, "Special Education: Numbers of Formal Disputes Are Generally Low and States Are Using Mediation and

systems,[5] a cost borne not only by non-disabled children but also by disabled students whose parents are less well counseled or attuned as to procedural strategies under IDEA.

ARGUMENT

The IDEA requires states to provide a free appropriate public education ("FAPE") to all children with qualifying disabilities between the ages of three and 21. 20 U.S.C. § 1412(1) (2005). Central to providing a FAPE for a disabled student is the development of an individualized education program ("IEP"). 20 U.S.C. § 1414(d) (2005). The IEP, the cornerstone for educational decision-making for disabled students, is developed through a team process involving, at minimum, the student's parent(s), one regular education teacher, one special education teacher, and a local education agency representative who is qualified to provide or supervise the provision of special education services and who is knowledgeable about the general curriculum and the school district's resources. 20 U.S.C. § 1414(d)(1)(B)(iv) (2005); 34 C.F.R. § 300.344(a)(4) (2005).

Where a school's implementation of these statutory requirements is subject to legal challenge, courts have consistently determined that the standard of proof is a preponderance of the evidence. Courts around the nation are

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Other Strategies to Resolve Conflicts" (Sept. 2003) (hereinafter "GAO Report 03-897").

[5] According to published statistics, in the 1999-2000 school year school districts spent an estimated $146.5 million on special education mediation, due process, and litigation activities. SPECIAL EDUCATION EXPENDITURE PROJECT, AM. INST. OF RESEARCH, WHAT ARE WE SPENDING ON PROCEDURAL SAFEGUARDS IN SPECIAL EDUCATION, 1999-2000? 5 (May 2003), http://www.csefair.org/publications/seep/national/Procedural%20Safeguards. pdf.

split, however, in allocating the burden of proof in IDEA cases. While allocation of the burden of proof is not always dispositive, determining which party bears the burden of proof in cases decided under the IDEA will produce the tie-breaker in cases where the evidence produced by the respective parties is virtually equal.

I. NOTHING IN IDEA REFLECTS ANY INTENT TO UPSET THE NORMAL BURDEN OF PROOF IN ADMINISTRATIVE PROCEEDINGS

A. The IDEA's Reliance on the Expertise of School Professionals to Accomplish its Goals Supports Assigning the Burden of Proof to the Party Challenging an IEP.

The initial inquiry in an administrative proceeding under the IDEA regards which party bears the burden of proof. The IDEA does not contain explicit authority for assigning the burden of proof to one party or another. Because the statute is silent, courts have resorted to various methods of statutory interpretation to discern congressional intent on this issue. In *Alamo Heights Indep. Sch. Dist. v. State Bd. of Educ.*, 790 F.2d 1153, 1158 (5th Cir. 1986), the Fifth Circuit best explained the rationale of those circuits that have placed the burden of proof on the moving party:

> [The IDEA] "place[s] primary responsibility for formulating handicapped children's education in the hands of local school agencies in cooperation with each child's parent." In deference to the statutory scheme and the reliance it places on the expertise of local school authorities . . . [IDEA] creates a "presumption in favor of the educational placement established

> by a [student's IEP]," and "the party attacking its terms should bear the burden of showing why the educational setting established by the [IEP] is not appropriate."

790 F.2d at 1158 (quoting *Tatro v. State of Texas*, 703 F.2d 823 (5th Cir. 1983), *aff'd in part, rev'd in part sub nom. Irving Indep. Sch. Dist. v. Tatro*, 468 U.S. 883 (1984)).

The Fifth Circuit's rationale echoed this Court's clear recognition, in *Board of Educ. of Hendrick Hudson Central Dist. v. Rowley*, 458 U.S. 176, 207-208 (1982), of the paramount role of state and local education agencies in developing, in cooperation with parents, educational plans for disabled children. *Rowley* reiterated that courts should accord substantial deference to educational judgments made by school officials and that Congress shared this view when it enacted the IDEA. *Id.* at 208. Courts have followed this admonition in many IDEA cases and have been "reluctant indeed to second-guess the judgment of education professionals." *Tice v. Botetourt County Sch. Bd.*, 908 F.2d 1200, 1207 (4th Cir. 1990). In IDEA cases involving burden of proof issues, this reluctance has led many courts to conclude that the rationale expressed by the Fifth Circuit in *Alamo Heights*, *supra*, is most instructive.

To that end, the First, Fourth, Fifth, Sixth and Tenth Circuits have followed the view that the moving party bears the burden of proof and require that the parents demonstrate that the IEP proposed by the school district was not reasonably calculated to enable the disabled child to receive educational benefit and that there is a remedy for the school system's alleged failure to comply with the terms of the IDEA. *E.g.*, *Doe v. Brookline Sch. Comm.*, 722 F.2d 910, 919 (1st Cir. 1983); *Weast v. Schaffer ex rel. Schaffer*, 377 F.3d 449, 452 (4th Cir. 2004); *Salley v. St. Tammany Parish Sch. Bd.*, 57 F.3d 458, 467 (5th Cir. 1995); *Tatro*, 703 F.2d at

830 ("[B]ecause the IEP is jointly developed by the school district and the parents, fairness requires that the party attacking its terms should bear the burden of showing why the educational setting established by the IEP is not appropriate."); *Doe v. Board of Educ. of Tullahoma City Sch.*, 9 F.3d 455, 458 (6th Cir. 1993); *Johnson v. Indep. Sch. Dist. No. 4*, 921 F.2d 1022 (10th Cir. 1990).

These circuits have held to what the court below characterized as "the traditional burden of proof that requires the parents challenging an IEP to establish both its procedural and substantive deficiencies." *Weast*, 377 F.3d at 452, *quoting Cordrey v. Euckert*, 917 F.2d 1460, 1466 (6th Cir. 1990). In other words, the burden of proof is placed upon the parents to demonstrate that the IEP proposed by the school district was not reasonably calculated to enable the student to receive educational benefits.[6]

B. Congress's Explicit Allocation of the Burden of Proof Elsewhere in the IDEA Reflects its Intention to Retain the Traditional Placement of the Burden of Proof Upon the Party Challenging an IEP.

Nothing in the IDEA's legislative history would suggest that Congress intended that the burden of proof should be placed on the school district, rather than on a party challenging the district's special education decision-making.

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[6] Ironically, while the Commonwealth of Virginia has submitted an *amicus* brief, along with other states, in support of the Petitioners' position in the instant appeal, its own hearing officers have tended to follow the general rule acknowledged in the decision below. *See, e.g.*, *Public Schools v. Doe*, Virginia Dep't of Education Division for Compliance Case No. 02-092 (2002) ("[T]he burden of proof was placed on the Parents as the party seeking to change the IEP.").

This is in contrast to other federal statutes such as the Freedom of Information Act, 5 U.S.C. § 552 (2005), where the courts were guided by clear congressional intent in assigning the burden of proof to government agencies seeking to withhold requested documents. *See, e.g., United States Dep't of Justice v. Tax Analysts*, 492 U.S. 136, 142, n.3 (1989) ("The burden is on the agency to demonstrate, not the requester to disprove, that the materials sought are not 'agency records' or have not been 'improperly' withheld. *See* S. Rep. No. 813, 89th Cong., 1st Sess., 8 (1965).").

Where no direct legislative statements indicate congressional intent, it is reasonable to draw inferences from other congressional action with respect to the statute. In this regard, where Congress chose to do so, it explicitly assigned the burden of proof with respect to a particular issue when it reauthorized the IDEA in 1997. Thus, for the seven years between the 1997 and 2004 reauthorizations of the IDEA, the statute specifically provided that where a parent challenges a school system's determination that it may impose normal disciplinary consequence on a disabled child because the misconduct at issue is not a manifestation of the child's disability, "the hearing officer shall determine whether the public agency has demonstrated that the child's behavior was not a manifestation of such child's disability."[7] 20 U.S.C. § 1415(k)(6)(ii)(B). *See Alex R., ex rel. Beth R. v. Forrestville Valley Comm. United Sch. Dist. No. 221*, 375 F.3d 603 (7th Cir. 2004) (discussing the duty of school districts to conduct a functional behavioral assessment and to implement a behavioral intervention plan when the school imposes certain disciplinary sanctions on a disabled child).

[7] Signed into law on December 1, 2004, the Individuals With Disabilities Education Improvement Act. Pub. L. No. 108-446, 118 Stat. 2614 (2004), which reauthorized the IDEA, removed this language from the statute. The reauthorized IDEA becomes effective July 1, 2005.

From this language it may be inferred that had Congress intended to depart from the traditional assignment of the burden of proof upon the party challenging the *status quo*, such as an existing IEP, it would have and could have done so. *Cf. Doe v. Chao*, 540 U.S. 614, 620, 621 (2004) (refusing to expand a right of recovery under the Privacy Act where Congress used language limiting the scope of the right and where expansion beyond the statutory text would be in tension with traditional legal principles).

In short, Congress chose not to assign the burden of proof in due process hearings brought pursuant to the IDEA, nor did it offer any legislative guidance on the subject other than at one time to explicitly assign such burden with respect to a completely different aspect of the IDEA, *i.e.*, so-called "manifestation hearings."

C. In the Absence of Clear Statutory Authority, Courts Should Allocate the Burden of Proof in IDEA Cases in the Same Manner as it is Assigned in Other Administrative Cases.

In the absence of any congressional guidance with respect to the burden of proof in due process hearings, courts should allocate the burden of proof in precisely the same manner that such burden is assigned in other administrative cases.[8] This means that the moving party, *i.e.*, the party

[8] Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (2005), is the closest analogous statute to the IDEA, for it prohibits federal fund recipients from depriving disabled citizens from equal access to public services, including education. *Southeastern Community College v. Davis*, 442 U.S. 397 (1979); 34 C.F.R. § 104.33 (2005). As with the IDEA, there is no specific burden of proof allocated under Section 504 in the language of the statute, leading courts to logically presume that in cases where an accommodation is requested of an educational institution, the burden of proof should rest with the plaintiff to show that the requested accommodation will meet the "special needs" of the plaintiff

seeking to challenge or change the *status quo*, should bear the burden of persuasion and the burden of proof. This is consistent with longstanding administrative law jurisprudence. Under virtually every federal and state administrative procedures law and practice, unless otherwise expressly provided by statute, the proponent (*i.e.*, moving party or one asserting the affirmative of an issue) bears the burden of proof in administrative proceedings. *Office of Workers' Compensation Programs, Dep't of Labor v. Greenwich Collieries*, 512 U.S. 267 (1994); 2 AM. JUR. 2D ADMINISTRATIVE LAW § 354 (2004). Accordingly, the failure of the proponent to sustain the burden of proof will result in a denial of the relief sought. *Velasquez v. Dep't of Higher Educ.*, 93 P.3d 540 (Colo. Ct. App. 2004).

In this regard, administrative law and practice reflect widely accepted principles for determining burden of proof in adversarial proceedings. The burdens of pleading and proof with regard to most facts have been, and should be, assigned to the party who generally seeks to change the present state of affairs and who therefore naturally should be expected to bear the risk of failure of proof or persuasion. 2 J. STRONG, MCCORMICK ON EVIDENCE § 337 pp. 509-511 (5th ed. 1999). It is also axiomatic that the burden of proof should be placed "upon the party to whose case the fact is essential." 9 WIGMORE ON EVIDENCE, § 2486 at 288 (CHADBOURN rev'd

"without sacrificing the integrity of the [defendant's] program." *Brennan v. Stewart*, 834 F.2d 1248, 1262 (5th Cir. 1988), *quoted in McGregor v. Louisiana State University*, 3 F.3d 850, 855 (5th Cir. 1993). *See also Lapid-Laurel v. Zoning Bd. of Adjustment of the Township of Scotch Plains*, 284 F.3d 442, 458 (3d Cir. 2002), in which the Third Circuit adopted this same assignment of the burden of proof in a case brought under the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3601 *et seq.* (2005), by a developer building housing for disabled elderly citizens.

ed. 1981). Applying these principles to IDEA cases, the party seeking a change in an IEP would bear the burden of explaining why the change is appropriate. That a party seeking to alter the *status quo* should bear the burden of proof plainly rests upon "broad reasons of experience and fairness." *Id.* at § 2487 at 292.

As shown below, the IDEA should be interpreted as adopting the normal burden of proof since there is no compelling reason, either based upon public policy or principles of fairness and justice, that would justify departing from this longstanding and time-tested rule.

II. PUBLIC SCHOOLS, LIKE OTHER GOVERNMENT AGENCIES, ARE ENTITLED TO A SUBSTANTIAL DEGREE OF DEFERENCE THAT RECOGNIZES THEIR EXPERTISE AND PRESUMES THEIR GOOD FAITH.

Even beyond the specific IDEA context (*see supra* Part I.A), courts traditionally have adopted two fundamental principles in dealing with governmental and administrative agencies generally, including boards of education: (1) the presumption of correctness, *i.e.*, that public agencies act lawfully and correctly, unless proven otherwise, *Thomas Jefferson Univ. v. Shalala*, 512 U.S. 504, 512 (1994); *Udall v. Tallman*, 380 U.S. 1, 16 (1965); *Jarvis Clark Co. v. United States*, 733 F.2d 873, 878 (Fed. Cir. 1984); and (2) that they are entitled to deference in matters concerning their particular expertise. *North Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 520 (1982); *Deal v. Hamilton County Bd. of Educ.*, 392 F.3d 840, 849 (6th Cir. 2004). Thus, in *Doe v. Region 13 Mental Health-Mental Retardation Comm'n*, 704 F.2d 1402, 1410 (5th Cir. 1983), the Fifth Circuit interpreted this Court's landmark student disability rights decision in *Southeastern Community College, supra*, as supportive of "a reasonable

deference to the decisions made by administrators of federally funded programs so long as no evidence is presented of discriminatory intent with regard to the handicapped person."

Whether appointed by elected officials or elected by their communities, public school boards are presumed to act in the best interests of the children they educate and, by extension, the best interests of our nation, the future of which depends so directly on that education. As one court succinctly stated, the school board "is a public body charged with a public responsibility" that must be exercised "solely in the best interests of the children attending the schools." *Taylor v. Board of Educ. of City School Dist.*, 191 F. Supp. 181 (S.D.N.Y. 1961), *aff'd* 294 F.2d 36 (2d Cir. 1961). Yet the thrust of Petitioners' and supporting *amici* briefs presupposes that teachers and other public school professionals have the malevolent intent to deprive disabled children of the basic rights guaranteed under the IDEA.

There is no empirical basis for this wholesale challenge to the good faith of public school professionals. To the contrary, $78.3 billion is spent each year on special education students, with $6.7 billion alone spent at the state and local levels for "assessment, evaluation and IEP related activities."[9] School systems that choose not to comply with the requirements of the IDEA by failing to provide disabled children with FAPE risk losing their share of over $11 billion in federal funding appropriated by Congress during the last fiscal year for special education aid to the states.[10]

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[9] Special Education Expenditure Project, Am. Inst. of Research, What Are We Spending on Special Education Services in the United States, 1999-2000? 20 (updated 2004). http://www.csef-air.org/ publications/ seep/national/ AdvRpt1.PDF.

[10] U.S. Dep't of Education, FY 2006 Budget Summary, Section 2.B. (Special Education and Rehabilitative Services), http://www.ed.gov/ about/overview/budget/budget06/summary/edlite-section2b.html

Several provisions of the IDEA manifest Congress's concern that special education teachers and staff be adequately trained to work with children with disabilities. *See, e.g.*, 20 U.S.C. § 1413(a)(3)(A)(ii), (iii) (2005); 20 U.S.C. § 1431(a), (b) (2005); *Chris D. v. Montgomery County Bd. of Educ.*, 753 F. Supp. 922, 932, n.37 (M.D. Ala. 1990). Thus, it is only fair and reasonable that, when challenged by parents, an IEP that was the creation of the parents along with teachers and other school-based professionals be afforded a presumption of correctness that would place the burden of challenging it on the parents. This is no different than the "reasonable deference" afforded by the courts to federal fund grantees' determinations as to the reasonableness of an accommodation restriction when challenged by a disabled student seeking relief under Section 504 of the Rehabilitation Act. *Region 13*, 704 F.2d at 1410; *Brennan*, 834 F.2d at 1261.

Even those circuits that have placed the burden of proof on school districts in due process hearings have recognized the contradictory notion that "[d]eference is owed to state and local agencies having expertise in the formulation of educational programs for the handicapped." *Muller v. Committee on Special Educ. of the East Islip Union Free Dist.*, 145 F.3d 95, 101 (2d Cir. 1998) (*quoting from Briggs v. Bd. of Educ. of State of Conn.*, 882 F.2d 688, 693 (2d Cir. 1989)); *Adams v. State of Oregon*, 195 F.3d 1141, 1145 (9th Cir. 1999). Petitioners offer no persuasive basis to challenge the deference to which teachers and other school-based professionals are entitled in the formulation of a child's IEP.

(visited May 30, 2005).

III. REQUIRING THE PARTY CHALLENGING AN IEP TO SUSTAIN THE BURDEN OF PROOF IS CONSISTENT WITH SOUND PUBLIC POLICY.

Petitioners' position that IDEA's affirmative obligations should place a greater evidentiary burden on school districts than other civil rights legislation,[11] including disability rights laws such as Section 504 and the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* (2005), is presumably predicated upon three considerations: (1) the alleged imbalance in resources and power between parents and school districts; (2) the presumption that the school district enjoys greater access to information about the child in question than the parents; and (3) the notion that the risk associated with a due process finding that errs in a school district's favor is far greater (*i.e.*, that a disabled child will be deprived of adequate educational services) than is the risk of erring in the parent's favor.

These policy bases advanced in opposition to the presumptive administrative and evidentiary placement of the burden of proof on the moving party are flawed in a number of respects. Moreover, Petitioners overlook the real consequences of placing the burden of proof on the school district to defend an IEP conceived in a process in which the parents share a collaborative role. Those consequences include a significant prolongation of the time and expense of due process hearings, a discouragement of mediated settlements as conceived by Congress when it reauthorized the IDEA in 1997, *see* 20 U.S.C. § 1415(e) (1997), and a diminution of the collaborative role of the IEP team.

[11] Although, as noted in footnote 8, *supra*, the courts have consistently placed the burden of proof in Section 504 lawsuits upon the plaintiff to demonstrate that a requested accommodation is unreasonable under the statute, rather than upon the educational institution to show otherwise.

A. Unique Among All Remedial Legislation, the IDEA Provides a Myriad of Procedural Protections to Assure That Parents Are Not Disadvantaged, Regardless of Resources.

Congress recognized "that in any [IDEA] disputes the school officials would have a natural advantage," so it therefore "incorporated an elaborate set of what it labeled 'procedural safeguards' to ensure the full participation of the parents and proper resolution of substantive disagreements." *Schaffer ex rel. Schaffer v. Weast*, 377 F.3d 449, 453 (4th Cir. 2004), *quoting School Comm. of Town of Burlington, Mass v. Dep't of Educ.*, 471 U.S. 359, 368 (1985). Notably absent from these conscientiously considered and carefully crafted protections is any provision to shift the burden of proof from its traditional assignment to the challenging party.

The IDEA ensures that parents are informed of the rights and protections available to them under the law. The IDEA's detailed procedures must be summarized in readable form and distributed to parents at every IEP meeting, whenever any change is being made to an IEP or placement, and even when a due process hearing is requested by the parents. They include: (1) prior written notice given a reasonable time before any proposed change is implemented in the child's educational program; (2) notices written in "language understandable to the general public" and in the primary language of the parents; (3) parent access to the records relevant to the case and the right to have the records explained, to make copies, and to amend records they consider inaccurate, misleading, or an invasion of privacy; and (4) an opportunity for a fair and impartial hearing where parents have the right to be represented by a lawyer or an individual trained in the problems of children with disabilities; the right to present evidence and to subpoena, confront, and cross-examine witnesses; and the right to

obtain a transcript of the hearing and a written decision by the hearing officer. *See* 20 U.S.C. § 1415 (2005); 34 C.F.R. §§ 300.129, 300.500-300.517 (2005) (providing detailed procedural protections for parents and children, including the right to an independent educational evaluation and to prior notice of any initiation or change in the "identification, evaluation, or educational placement of the child"); 34 C.F.R. § 300.503(a) (2005) (prescribing the contents of the notice containing procedural safeguards);[12] 34 C.F.R. § 300.509 (2005) (enumerating the extensive hearing rights parents have before an "impartial hearing officer").

Guaranteeing these procedural safeguards is so fundamentally a part of the law that failure to fulfill them has been construed by the courts in some circumstances to be a denial of the right to FAPE, even where the substance of the child's IEP is reasonably calculated to provide educational benefit, as prescribed by the IDEA. *Honig v. Doe*, 484 U.S. 305 (1988); *Heather S. v. State of Wisconsin*, 125 F.3d 1045 (7th Cir. 1997).[13] This provides ample incentive for school districts to make concerted efforts to ensure that they follow procedures closely and afford parents the protections to which the law entitles them.

Given the many procedural safeguards to which parents are entitled, the notion advanced by Petitioners that parents of disabled children, particularly those who are economically disadvantaged, are not on an equal footing with the school district as they participate in the IEP team process and, if a dispute arises, in a due process hearing, is inaccurate.[14] A school system that fails to answer parents' questions about their child's education or to take their input into account at the IEP team may be found out of compliance

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[12] Appendix A, attached hereto, contains a sample of the written procedural safeguards that a local school district provides to parents at the commencement of each and every IEP team meeting to ensure that they fully understand their rights. For a concise summary of the procedural protections afforded parents by the IDEA, *see* FISCHER, SCHIMMEL & STELLMAN, TEACHERS AND THE LAW (6TH ed. 2003), 354-355.

[13] Notably, despite the Third Circuit's having joined those circuits that have sought to shift the burden of proof to the school districts in IDEA cases, a recent ruling by that court appears to have reached precisely the opposite conclusion. In *C.M. v. Board of Educ. of the Union County Regional High Sch. Dist.*, No. 04-1407 (3d Cir. April 19, 2005) *at* http://www.ca3.uscourts.gov/opinarch/041407np.pdf, at *2, the Third Circuit held in an unreported decision that, "A plaintiff bears the burden of establishing the harm caused by the claimed procedural shortcomings, and Plaintiffs here clearly have not met that burden." This ruling, albeit unpublished, would appear to suggest that that court has begun to question its reasoning on burden-shifting in *Oberti v. Board of Educ.*, 995 F.2d 1204 (3d Cir. 1993) as well as *Lascari v. Board of Educ. of the*

Ramapo Indian Hills Regional High Sch. Dist., 116 N.J. 30, 560 A.2d 1180 (1989), a case heavily relied upon by the Petitioners in this case. In *Lascari* the New Jersey Supreme Court sought to interpret federal IDEA law on the subject of assigning the burden of proof.

[14] Petitioners urge this Court to assign the burden of proof to school districts in part based on the disadvantages experienced by low income families, such as difficulty in securing and paying for an attorney and expert witnesses and lack of understanding of a complex and daunting legal process that school districts allegedly manipulate at every turn to deny children the special education to which they are entitled. This argument suffers from several flaws: 1) it ignores the fact that Congress already considered these disadvantages and made public policy decisions about what statutory protections (e.g., attorneys' fees for prevailing parents, parent assistance centers) would compensate for them; 2) it implies, without any substantiation, that allocating the burden of proof to school districts somehow would significantly influence the decision by low income families to pursue due process hearings and would markedly improve their chances of success, thus improving the educational services their children receive; and 3) it fails to acknowledge that, in practical terms, it will be the affluent parents, who are already more likely to request due process hearings and to retain counsel, GAO Report at 15 n. 22, who stand to benefit most from such a shifting of the burden, but the costs imposed by the lengthier and more expensive hearings engendered by such a shift will be borne by all, by diverting money and professional resources away from special education programs and services.

with federal law, and risks loss in any resultant dispute. As the Fourth Circuit has consistently held, "Failure to meet IDEA's procedural requirements is an adequate ground for holding that the public school failed to provide a free appropriate public education." *Hall v. Vance County Bd. of Educ.*, 774 F.2d 629, 635 (4th Cir. 1985), *citing Rowley*, 458 U.S. at 206, n.27; *accord Board of Educ. of Cabell County v. Dienelt*, 843 F.2d 813, 815 (4th Cir. 1988).

B. Under the IDEA Parents Have Broad Access to their Children's Educational Information, Making Them Equal Partners With School Professionals in Developing Their Children's Educational Program

Courts consistently have recognized Congress's intent that parents be treated as equal partners with teachers and other public school professionals in the development of a child's IEP. For instance, in *Hanson ex rel. Hanson v. Smith*, 212 F. Supp. 2d 474, 481 (D. Md. 2002), the court observed that "the [IDEA] contemplates parental participation in the development of the IEP." IDEA anticipates the parents' attendance at all IEP meetings and participation at every step of the development of the child's educational program. The court in *Hanson* went on to observe that "the individualized educational program or IEP is the centerpiece of a FAPE and is a collaboratively developed plan for a disabled child's education. The IEP is supposed to be the joint product of discussions among the child's parents, teachers, and local school officials and must specify goals and short-term objectives for the child, any related services, and the criteria and evaluation procedures that will be used." *Id., quoting Sanger v. Montgomery County Bd. of Educ.*, 916 F. Supp. 518, 520 (D. Md. 1996). *See also Justin G. ex rel. Gene R.*

v. Board of Educ. of Montgomery County, 148 F. Supp. 2d 576, 582 (D. Md. 2001).

To that effect, parents are never without access to the educational, medical, and psychological records needed to enable them to participate as equal partners in the development of their child's IEP. Both the IDEA and the federal law compelling the disclosure of educational records (the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (2005) ("FERPA")) ensure that parents have access to the very same records upon which school district personnel rely in crafting the IEP and proposing an appropriate educational placement for the child. Similar requirements are contained in the IDEA and its implementing regulations. 34 C.F.R. § 300.501 (2005) (labeled "Opportunity to examine records"). Thus, well in advance of the creation of an IEP, a parent has the right to examine his/her child's school records and to ask questions of teachers and other knowledgeable school personnel if unable to understand those records.

Indeed, in cases such as the instant proceeding where the student has never previously attended public school, the parents, not the school district, have far superior access to and knowledge of their child's educational progress. Parents of children such as Brian Schaffer, who attended a private school while contemplating a public school placement, will have access to private school records that the school district may not see during the IEP process, as parents have no obligation to disclose records, unlike the school system, which must share all school records with the parents. In *Amanda J. ex rel. Annette J. v. Clark County Sch. Dist.*, 267 F.3d 877, 891 (9th Cir. 2001)(emphasis added), the Ninth Circuit observed that "[b]y mandating parental involvement and requiring that parents have full access to their child's records, Congress sought to ensure that the interests of the individual children were protected. *See Rowley*, 458 U.S. at

208. Not only will parents fight for what is in their child's best interests, *but because they observe their children in a multitude of different situations, they have a unique perspective of their child's special needs.*" Thus, even the Ninth Circuit, one of the courts that assigns the burden of proof to the school district, *Clyde K. v. Puyallup School Dist. No. 3*, 35 F.3d 1396, 1398 (9th Cir. 1994) (stating, without rationale, that "[t]he school clearly had the burden of proving at the administrative hearing that it complied with the IDEA."), appreciated the "unique perspective" that rendered parents far more knowledgeable than school district employees about their children.

Moreover, both the IDEA and its implementing regulations prescribe that parents have access to a list of school district witnesses and copies of all documents, including "all evaluations" prepared with respect to their child that the school district intends to use, at least five business days prior to the start of any due process hearing. 20 U.S.C. § 1415(f)(2) (2005); 34 C.F.R. § 300.509(b) (2005). Parents, like school districts, have the right to compel the attendance of witnesses, including school district employees, at due process hearings. 34 C.F.R. § 300.509(a)(2) (2005).

Thus, Congress has substantially evened the playing field, obviating the need to depart from the Fourth Circuit's proper application of the traditional evidentiary rule that places the burden of proof on the moving party. Moreover, there is no sound basis for concluding that in those jurisdictions where parents are assigned the burden of proof, there has been any notable loss of educational benefit suffered by disabled children. Where, as in the instant case, a "close call" must be decided in the school district's favor based upon the assignment of the burden of proof to the parents, the evidence must substantially support the validity of the school district's proposed educational program, or

there would be no such "close call." In short, requiring parents to bear the burden of proving that an IEP has failed to provide their child with a FAPE, or that the school district somehow failed to comply with the IDEA, has not led to wholesale abuses, much less flaunting of the law, by school personnel.[15] To suggest otherwise is to demean the hundreds of thousands of special educators and service providers who have committed their lives and careers to educating children with special needs.

C. Assigning the Burden of Proof to School Districts in Every Case in Which an IEP is Challenged Will Result in More and Lengthier Hearings, With More Uncertain Outcomes.

Shifting the burden of proof to the school district in all cases, based upon the erroneous assumption that parents are not, in fact, equal partners in the IEP process, will undoubtedly undermine the collaborative process between parents and school professionals contemplated by Congress. Although armed with the same or greater knowledge of their child's needs and abilities, parents and their attorneys who need no longer bear the burden of proving a specific flaw in the child's IEP may now sit back in hopes that the school district somehow will miss proving at a due process hearing that it complied with the IDEA in each and every respect. In turn, teachers and other school-based professionals will face every due process demand with the prospect that they may

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[15] In 2003, GAO reported data showing a "remarkably low incidence of serious disputes over special education programming" during the 2001-02 school year. The U.S. Department of Education interpreted this data as providing "little support for anecdotal contentions of widespread and systemic problems." GAO Report 03-897 at 29 (reproducing letter of Dr. Robert Pasternack, Assistant Secretary of Education).

somehow fail to satisfy a hearing officer or administrative law judge as to the validity of each and every component of an IEP that they sought to develop in good faith.

IEPs may no longer be prepared by cooperative teams of parents and educators as IDEA envisions, but instead effectively will become mere adversarial antecedents to potential due process hearings. At such hearings, without putting any evidence into the record and indeed, by simply informing the school district in advance that he /she disagrees with the IEP,[16] a parent can simply await the possibility that a school district fails to meet its burden of demonstrating the validity of each and every component of the child's IEP.

[16] Current law requires state agencies responsible for conducting due process hearings to prescribe a procedure requiring parents to inform the school district and hearing officer, in advance of a due process hearing, of "the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem." 20 U.S.C. § 1415(b)(7) (2005). Yet besides the fact that, on its face, this requirement does not guarantee that a school district will have adequate particulars as to the basis for a due process hearing demand prior to trial, the only means of enforcing this provision is by a post-hearing reduction (not even necessarily a complete elimination) of attorneys' fees awarded to a prevailing parent for non-compliance. 20 U.S.C. § 1415(i)(3)(F)(iv) (2005). Under the Individuals with Disabilities Education Improvement Act, Pub. L. 108-446, effective July 1, 2005, a school district may challenge the sufficiency of the due process notice provided by the parents, *id.* at § 615(c)(2)(A); and upon receiving such a challenge, a hearing officer must determine whether the notice meets the statutory requirements. *Id.* at § 615(c)(2)(D). Sufficiency of the notice is a pre-requisite to holding a due process hearing, *id.* at § 615(b)(7)(B), and during the hearing parents may not bring up issues not raised in the notice. *Id.* at § 615(f)(3)(B). While on their face these procedures may enable school districts to understand better the particulars of parental complaints prior to due process hearings and prevent "surprise" issues from being unveiled for the first time during the hearing, they do not necessarily circumscribe the evidence a school district bearing the burden of proof would be forced to produce if it must show that the IEP as a whole provides FAPE.

Applying the reasoning of some of the circuit courts of appeals, a school district might even have more generally to prove its "compliance with the IDEA," *Clyde K.*, 35 F. 3d at 1398, a sweeping and ambiguous goal that presents even greater challenges of proof, especially when there is an insufficient understanding of the parents' precise concerns with the school district's "compliance." Under such a burden of proof scheme, school districts may become responsible for the award of unnecessary, costly, and unreasonable services, not to mention the substantial risk of paying thousands of dollars in attorneys' fees to the prevailing parents.

Some of the more unreasonable, unjustified, and costly demands that have been asserted by parents of disabled students as part of IEP challenges in a due process hearing include: a request that the school system fund post-graduate education, *Wexler v. Westfield Bd. of Educ.*, 784 F.2d 176 (3d Cir. 1986); that it stop assigning a child homework, *White ex rel. White v. Ascension Parish Sch. Bd.*, 343 F.3d 373 (5th Cir. 2003); that an aide be present until an adult arrives at the bus stop to take a child home, *M.S. ex rel. L.S. v. Scarborough Sch. Comm.*, 366 F. Supp. 2d 98 (D. Me. 2005); that the school district provide the student hippotherapy (*i.e.*, the use of horses as a therapeutic tool) at public expense as a form of occupational therapy, *Erickson v. Albuquerque Pub. Sch.*, 199 F.3d 1116 (10th Cir. 1999); that video teleconferencing equipment be installed in a second grade classroom in order to accommodate an absent child, *Eric H. ex rel. John H. v. Methacton Sch. Dist.*, 265 F. Supp. 2d 513 (E.D. Pa. 2003); that a school system pay two years of private school tuition because parents disputed testing methods used to evaluate progress, *Protano v. Valley Central Sch. Dist.*, 2001 WL 209935 (S.D.N.Y. Feb. 15, 2001); that transportation and other special education services be provided while a child attends college, *Chuhran v. Walled Lake Consol. Sch.*, 839 F. Supp. 465 (E.D. Mich.

1993), *aff'd without published opinion* 51 F.3d 271 (6th Cir. 1995); that a school system fund a child's inpatient substance abuse rehabilitation following the child's expulsion for alcohol and marijuana use, *Field v. Haddonfield Bd. of Educ.*, 769 F. Supp. 1313 (D.N.J. 1991); and that a school system provide a child aquatic therapy (*i.e.*, a specific modality of physical therapy), *In re Student with a Disability*, West Virginia State Educational Agency Case No. 97-020, 102 IDELR 1864 (1997).

When the burden of proof is placed on the school district to prove, variantly, its "compliance with the IDEA," *Clyde K.*, 35 F. 3d at 1398, or "the appropriateness of the IEP it has proposed," *Oberti*, 995 F.2d at 1031, the mechanics of the due process hearing are dramatically affected. Rather than requiring that parents open a due process hearing by presenting evidence supporting their specific objection(s) to the IEP or placement decision with which they disagree (as would occur where the parents bear the burden of proof and persuasion), the school system's assumption of the burden of proof would compel it to present its case-in-chief without necessarily knowing, in advance, anything more than a generalized claim of, for instance, a "failure to provide FAPE" or "refusal to provide appropriate extended school year services." Instead of responding to the parent's specific complaint, a school district would have to prove a negative, not only that there were no failings with respect to the procedural safeguards afforded the parents, but also that each and every component element of the IEP was not inappropriate, in hopes of somehow addressing the as yet unarticulated exact reasons for the parental challenge. Yet IEPs (particularly those involving profoundly disabled students) are often quite detailed compilations of measurable learning goals, short and long-term objectives, and assessment tools to ensure that progress may be adequately

measured.[17] If even a single element of the IEP document is successfully challenged in a due process hearing, the parent prevails and is eligible for substantial remedies including private school tuition reimbursement, often unreasonable requested services, and attorneys' fees.

With the burden of proof assigned to the school district, procedurally the school district must rest its case before it learns exactly what components of an IEP are being challenged, be it the number of hours the child is offered a related service such as physical or occupational therapy, the validity of a particular reading goal, or the absence of certain adaptive technology in the classroom.[18] Alternatively, the parent can simply contend that the school district somehow failed to fully comply with the IDEA, a generalized claim that may be impossible adequately to rebut. At the conclusion of the parent's case, the school system is subject to the discretion of a hearing officer or administrative law judge who may or may not allow rebuttal evidence on the true issue that the parent has held back from revealing until it

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[17] Appendix B is a model IEP containing the types of goals, objectives, and assessment tools required by 20 U.S.C. § 1414(d) (2005). Where the burden of proving the "appropriateness of the IEP," *Carlisle Area School v. Scott P.*, 62 F.3d 520, 533 (3d Cir. 1995), rests with the school district, every line of this document poses a potential pitfall for a district attempting to meet a hearing officer's expectations of an "appropriate" goal, objective, or even determination as to the child's present level of performance.

[18] This presupposes that the school district has, in fact, met its burden of proving that the IEP in question was appropriate, and/or that it complied fully with the IDEA. So long as the district is required to carry this heavy burden of proof, it risks the very real possibility that, upon resting its case-in-chief, the hearing officer will find that it has not met that burden, thereby ruling in the parents' favor even before the school district has learned the precise nature of the parents' complaint. Such a chilling and Kafkaesque outcome clearly was not contemplated by the authors of the IDEA.

may now be too late to disprove. *Faigin v. Kelly*, 184 F.3d 67, 86 (1st Cir. 1999) (confirming that granting or denial of rebuttal rests entirely within discretion of trier of fact).

While due process typically is considered an issue only for parents, in reality both parties are entitled to due process and a fair opportunity to prepare for and explain their respective cases.[19] When a school system is denied this opportunity and loses—either because it was denied an opportunity for rebuttal testimony after it finally learned the true extent of the parents' case, or on account of its failure to satisfactorily demonstrate full compliance with the IDEA, or because it was unaware of the particular challenge to a

[19] Neither the current IDEA nor its implementing regulations require that hearing officers charged with conducting due process hearings hold a pre-trial conference where the precise issues to be tried are identified, much less a mechanism that would prevent a parent from introducing issues at the hearing that were never previously identified. While the newly reauthorized IDEA, effective July 1, 2005, does limit parents to raising only previously identified issues during the hearing, it does not mandate the holding of pre-hearing conferences that might produce stipulation that the IEP complies with FAPE requirements except as to the particular issues specified in the due process notice. Without such a stipulation, if the school district bears the burden of proof, a hearing officer could determine that the burden still entails production of evidence sufficient to prove complete compliance with the IDEA. As with the allowance of rebuttal evidence, the determination of whether to hold such a pre-trial hearing for the purpose of identifying the precise issues to be tried rests entirely within the discretion of the hearing officer and, in some states, may not even be a recognized procedure in administrative hearings. For example, the Code of Maryland Regulations governing hearings conducted by administrative law judges (such as special education due process hearings, including that held below in the instant case) provides only that, "When appropriate, the judge may hold a prehearing conference to resolve matters preliminary to the hearing," including, *inter alia*, "[F]actual and legal issues." COMAR §§ 28.02.13(A),(C)(2) (2004). The determination of when such a conference is "appropriate" is left entirely up to the administrative law judge.

specific IEP goal, objective, or service—it is required to pay large sums of money in attorneys' fees and private school tuition or in costly compensatory educational services.

Given the chronic underfunding of special education by the Federal Government, the only place school boards can find the funds to pay for the consequences of this form of procedural "Russian Roulette" in every due process hearing is from the special and regular education classrooms. Losing even a single due process hearing can cost a school board the price of two or more full-time teachers.[20] Yet that is precisely the foreseeable outcome of a system that encourages parents to initiate due process hearings rather than serve as partners with public schools in developing their child's educational programs.

Finally, Congress's stated intention that disputes arising under the IDEA be resolved through the less costly process of federal- and State-mandated mediation, *see* 20 U.S.C. § 1415(e), would be seriously undermined if parents are no longer expected to prove violations of the statute to prevail in due process hearings, thus obtaining services, compensation,[21] and attorneys' fees merely by making

[20] A federal court in Maryland recently awarded over $217,000 in attorneys' fees and costs to parents who prevailed in a routine special education case disputing the appropriateness of an IEP. *Board of Educ. of Frederick County v. I.S. ex rel. Summers*, 358 F. Supp. 2d 462 (D. Md. 2005).

[21] At least one circuit court of appeals has ruled that "in a [42 U.S.C. §] 1983 (2005) action to enforce IDEA, . . . compensatory damages are available to remedy IDEA violations." *W.B. v. Matula*, 67 F.3d 484, 494 (3d Cir. 1995). *See also Ridgewood Bd. of Educ. v. N.E. ex rel. M.E.*, 172 F.3d 238, 252 (3d Cir. 1999) (finding "that the traditional presumption in favor of all appropriate relief is not rebutted as to § 1983 actions to enforce IDEA," and suggesting that "compensatory damages for generalized pain and suffering" may be available in certain § 1983-based IDEA claims. *Matula*, 67 F.3d at 495.)

generalized claims of "non-compliance" or "inappropriateness" of an IEP.

In short, automatically assigning the burden of proof to school districts and away from the moving party will only accelerate the ever increasing costs that school districts are expected to incur in the administration of the IDEA, with no guarantee that disabled children will be better served. Assigning the burden of proof to the moving party in special education due process hearings is thus consistent not only with longstanding administrative law and evidentiary principles but with both congressional intent and public policy considerations.

CONCLUSION

For the foregoing reasons, the judgment below should be **AFFIRMED**.

Respectfully submitted,

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APPENDIX A

CARROLL COUNTY PUBLIC SCHOOLS

RIGHTS OF PARENTS BROCHURE

APPROPRIATE EDUCATION PROGRAM

LEAST RESTRICTIVE SETTING

FREE PUBLIC EDUCATION

DUE PROCESS

CONFIDENTIALITY

INDIVIDUAL EDUCATION PROGRAM

ADMISSION, REVIEW, AND DISMISSAL COMMITTEE

Unlocking the Regulations
to Better Serve Students

CCPS/MSDE REVISION AUGUST/SEPTEMBER 2002
IDEA AMENDMENTS 1997 (PL 105-17) HTF - 08/01/02

BEST AVAILABLE COPY

PROCEDURAL SAFEGUARDS

Compliance Statement: This edition of the Rights of Parents Brochure has been compiled based on information supplied by the Maryland State Department of Education in conjunction with the Reauthorization of the Individuals with Disability Education Act (I.D.E.A. PL. 105-17). It is believed this document reflects the required language changes according to the Reauthorization. Should a reader discover language they believe is not accurate please notify the Office of Special Education of Carroll County Public Schools located at125 North Court Street in Westminster, MD 21157. This document is also considered the Rights of Parents in matters relating to Section 504 of the Rehabilitation Act.

PART I – PROCEDURAL SAFEGUARDS

The protections included in this document are established by the Individuals with Disabilities Education Act of 1997 (IDEA), 20 U.S.C.§1400 et seq., 34 CFR 300 and COMAR 13A.05.01.01-.16 that implement the IDEA. Each public agency shall establish, maintain, and implement procedural safeguards that meet the requirements of the IDEA. A copy of this document is to be provided to parents:

- Upon the initial referral of a child for evaluation;
- With each notice of a meeting to develop, review, or revise a child's Individualized Education Program (IEP);
- When a child is reevaluated; and
- When parents request mediation or a due process hearing.

The procedural safeguards must be written in language understandable to the general public and provided in the native language of the parents or other mode of communication used by the parents, unless it is clearly not feasible to do so. If the native language or other mode of communication of the parents is not a written language, CCPS shall take steps to ensure that the procedural safeguards are translated orally or by other means in the parents native language or other mode of communication. There is written evidence that documents that the notice was translated and the parents understood the content of the procedural safeguards.

The parents of a student with a disability must be afforded an opportunity inspect and review all education records with respect to the identification, evaluation, educational placement of the child, and the provision of a free appropriate public education (FAPE). *Please refer to Part IX - Procedures Regarding Educational Records for more specific information.* The parents of a student with a disability must also be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement of the child, and the provision of FAPE to the child. *Please refer to Part VII - Individualized Education Program (IEP) for more specific information.* For additional copies of this document, please contact the child's school.

PART II – PRIOR NOTICE

CCPS must give parents written notice each time it proposes or refuses to initiate or change the identification, evaluation, educational program, or educational placement of a

child, or the provision of FAPE to a child. If the written notice relates to an action proposed by CCPS that also requires parental consent, CCPS may give written notice at the same time it requests parental consent. Written notice must include a:

- Description of the action(s) proposed or refused by CCPS;
- An explanation of why CCPS proposes or refuses to take the action(s);
- A description of any other options that CCPS considered and the reasons why those options were rejected;
- A description of each evaluation procedure, test, record, or report CCPS used as a basis for the proposed or refused action(s);
- A description of any other factors that are relevant to CCPS's proposal or refusal;
- A statement that the parents of a student with a disability have protections under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of the procedural safeguards can be obtained; and
- Sources for parents to contact to obtain assistance in understanding the provisions of the IDEA.

The notice must be written in a language understandable to the general public and provided in the native language of the parents or other mode of communication used by the parents, unless it is clearly not feasible to do so. If the native language or other mode of communication of the parents is not a written language, CCPS shall take steps to ensure that:

- The notice is translated orally or by other means to the parents in his or her native language or other mode of communication;
- The parents understand the content of the notice; and
- There is written evidence that documents that the notice was translated and the parents understood the content of the notice.

PART III – CONSENT

Consent means that the parents:

- Have been fully informed of all information relevant to the activity for which consent is sought, in the parents native language or other mode of communication;
- Understand and agree in writing to the carrying out of the activity for which their consent is sought and the consent describes that activity and lists the records (if any) that will be released and to whom; and
- Understand that the granting of consent is voluntary on the part of the parents and may be revoked at anytime.

If parents revoke consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

General

CCPS must obtain parental consent before conducting an initial evaluation or reevaluation and before the initial provision of special education and related services to a student with a disability. Consent for initial evaluation may not be construed as consent for initial placement for the initial provision of special education and related services to a student with a disability. Parental consent is not required before reviewing existing data, as part of an evaluation or reevaluation, or administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

Parental Refusal

If parents refuse to give consent for the initial assessments or reassessments, CCPS has the right to request mediation or a due process hearing and is required to notify the parents of CCPS's request for a due process hearing and the availability of mediation. *Please refer to Part XIV – Resolving Disagreements for more specific information.*

Failure to Respond to Request for Reevaluation

CCPS must attempt to obtain informed parental consent before reassessing the child. Informed parental consent need not be obtained for reassessment if CCPS can demonstrate that it has taken reasonable measures to obtain parental consent, and the child's parents have failed to respond. If parents fail to respond to CCPS's written notice of their proposal to reassess the child, and CCPS can demonstrate that they have taken reasonable measures to obtain parental consent, CCPS may proceed with the reassessment without parental consent. To demonstrate reasonable measures, CCPS must maintain a record of CCPS's attempts to obtain parental consent, such as:

- Detailed records of telephone calls made or attempted and the results of those calls;
- Copies of correspondence sent to parents and any response received; and
- Detailed records of visits made to the parent's home or place of employment and the results of those visits.

Limitation

CCPS may not use the parent's refusal to consent to one service or activity, such as initial evaluation, reevaluation, or initial provision of special education and related services, to deny the parents or the child of any other service, benefit, or activity of CCPS except as required by the IDEA.

PART IV – EDUCATIONAL EVALUATION PROCESS

Assessments

Assessments are procedures that are individualized for each student. CCPS may use a variety of assessment tools and strategies to gather sufficient relevant functional and developmental information for the IEP team to determine if the child is a student with a disability and the content of the child's IEP. Assessments include printed tests, observations, information from parents, and other sources of information that are

- Selected and administered in a way that is not racially or culturally discriminatory;
- Administered in the child's native language or other mode of communication unless it is not feasible to do so;
- Used to measure the extent to which the child has a disability and needs special education services;
- Valid for the specific purpose for which they are used and are administered by trained and knowledgeable personnel according to the instructions provided by the producer of the test;
- Tailored to identify specific areas of educational need, not merely to provide a single general intelligence quotient;
- Measures of the extent to which a child with limited English is a student with a disability, rather than the child's English language skills; and
- Selected to reflect a child's aptitude or achievement accurately, rather than reflect the impaired sensory, manual, or speaking skills, except where these skills are the factors that the test is to measure.

Each report of assessment procedures shall include:

- A description of the child's performance in each area of suspected disability;
- Relevant functional, cognitive, developmental, behavioral, and physical information;
- Instructional implications for the child's participation in the general curriculum or, for a preschool child, participation in appropriate activities; and
- For any assessments not administered under standard conditions, a description of how it varied from standard administration procedures.

Evaluation

An individual who suspects that a child may have a disability that requires the provision of special education and related services may refer the child, in writing, to the IEP team at the child's school. CCPS has 90 days from the date the agency receives the written referral to complete the initial evaluation. CCPS will provide parents with a copy of the IEP team evaluation decision.

Evaluation means procedures used in accordance with federal and State regulations concerning procedures for evaluation and determination of eligibility, to determine whether a child has a disability and the nature and extent of the special education and related services the child needs. A full and individualized evaluation is conducted before the initial provision of special education and related services to a student with a disability under the IDEA. An evaluation occurs at a meeting of the IEP team and other qualified professionals, as appropriate, to review:

- Existing data and assessment results;
- Evaluations and information provided by parents;
- Current classroom-based assessments, including State and district-wide assessments and observations, and
- Observations by related services personnel to determine:
  - Whether the child is a student with a disability;
  - The child's present levels of performance and educational needs;
  - The child's special education and related service needs whether or not commonly linked to the disability category in which the child has been

classified; and

- Any additions or modifications needed for the child to meet the goals of the IEP and to participate, if appropriate, in the general curriculum.

The initial evaluation shall be comprehensive enough to ensure a child is assessed in all areas related to the suspected disability, including, if appropriate:

- Academic performance;
- Communication;
- General intelligence;
- Health, including hearing and vision;
- Motor abilities; and
- Social, emotional, and behavioral status. • No single procedure is used to determine if a child is a student with a disability and to determine an appropriate educational program for the child.
- A child may not be identified as a student with a disability in need of special education and related services if the primary reason for the eligibility determination is lack of instruction in reading or math, or because the child has limited English proficiency.
- If at the initial evaluation, the IEP team determines that the child has a disability and needs special education and related services, the IEP team must meet within 30 days of the initial evaluation to develop the child's IEP.

Reevaluation

A reevaluation will be conducted at least once every three years or more frequently if conditions warrant a reevaluation, or if parents or the child's teacher requests a reevaluation. The IEP team will review existing evaluation data, including information from parents, classroom-based assessments, State and district-wide assessments, and observations to decide if any additional data are needed to determine:

- Whether the child continues to have a disability that requires the provision of special education and related services;
- The child's present levels of performance and educational needs; and
- Whether there any additions or modifications needed for the child to meet the goals of the IEP and to participate, if appropriate, in the general curriculum.

If the IEP team determines that additional data are needed, those assessments will be conducted after parents are notified and parental consent has been requested. The team will review the results of assessments within 90 days of the IEP team meeting where the IEP team determined the need for additional data and use the results, as appropriate, to revise the child's IEP.

If the IEP team determines that no additional data is needed, CCPS will notify the parents of that fact, and the reasons for that determination. CCPS is not required to conduct assessments, unless requested to do so by the child's parents.

Termination of Services

CCPS must evaluate a student with a disability in accordance with federal and State regulations for evaluation before determining that the child is no longer a student with a

disability. This evaluation is not required before the termination of a child's eligibility under Part B of the IDEA due to graduation with a regular high school diploma, or exceeding the age eligibility for FAPE under State law.

PART V – INDEPENDENT EDUCATIONAL EVALUATION

Definitions

- Independent Educational Evaluation means tests and assessment procedures conducted by appropriately qualified personnel not employed by CCPS responsible for the education of the child.
- Public expense means that CCPS either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parents.

Parents of a student with a disability have the right to obtain an independent educational evaluation of the child under the IDEA subject to the procedures provided below. CCPS shall provide parents, upon their request for an independent educational evaluation, information about where an independent educational evaluation may be obtained and the agency criteria applicable for an independent educational evaluation.

Public Agency Criteria

When an independent educational evaluation is at public expense, the criteria under which the independent educational evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that CCPS uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation. Except for the criteria described above, CCPS may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

A Parent's Right to Evaluation at Public Expense

Parents have the right to an independent educational evaluation at public expense if the parents disagree with an evaluation obtained by CCPS. If parents request an independent educational evaluation at public expense, CCPS must, without unnecessary delay, either:

- Initiate a due process hearing to show that its evaluation is appropriate; or
- Ensure an independent educational evaluation is provided at public expense, unless CCPS demonstrates in a due process hearing that the evaluation obtained by the parents did not meet CCPS criteria.

If CCPS initiates a hearing and the final decision is that the agency evaluation is appropriate, parents still have the right to an independent educational evaluation, but not at public expense. If parents request an independent educational evaluation, CCPS may ask parents for the reason why the parents object to the public evaluation. However, the parent's explanation is not required and CCPS may not unreasonably delay either providing the independent educational evaluation at public expense or initiating the due process hearing to defend CCPS's evaluation.

Parent-Initiated Evaluation

Parents always have the right to obtain an independent educational evaluation from qualified professionals of their choice, at their own expense. The IEP team must consider the information from parent-initiated evaluation at private expense, if it meets CCPS criteria, when making any decisions with respect to the provision of FAPE to the child. The results of parent-initiated private evaluation may also be presented as evidence at a due process hearing regarding the child.

Request for an Evaluation by a Hearing Officer

If an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH) requests an independent educational evaluation as a part of a due process hearing, the cost of the evaluation must be at public expense.

PART VI – INDIVIDUALIZED EDUCATION PROGRAM (IEP)

IEP Team Meetings

CCPS uses a team approach to decide whether a child is a student with a disability as defined by the IDEA and the educational needs of the child. CCPS is responsible for initiating and conducting meetings for the purposes of developing, reviewing, and revising the IEP of a student with a disability, and determining the child's educational placement. The parents of each student with a disability must be notified and afforded the opportunity to participate in any IEP team meeting conducted for their child. Parents are members of the IEP team that makes decisions regarding their child's educational placement. CCPS shall make reasonable efforts to ensure that the parents understand, and are able to participate in any group discussions relating to the educational placement of their child, including arranging for an interpreter for parents with deafness, or whose native language is not English.

Once the IEP team determines the child requires special education and related services, the IEP team must meet within 30 days to develop the child's IEP. As a member of the IEP team, parents have the right to request a review of their child's IEP at any time.

Parent Participation in Meetings

CCPS shall take steps to ensure that one or both of the parents of a student with a disability are present at each IEP team meeting, or are afforded the opportunity to participate. Parents are to be notified of meetings early enough to ensure that they will have an opportunity to attend, and scheduling the meeting at a mutually agreed on time and place. The notice must indicate the purpose, time, location of the meeting, and who will be in attendance. The notice must also inform parents that at the discretion of the parents or CCPS, other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate, may participate on the IEP team. The determination of the knowledge or special expertise of any individual shall be made by the party (parents or CCPS) who invited the individual to be a member of the IEP team.

For a student with a disability beginning at age 14, or younger, if appropriate, the notice must also indicate that a purpose of the meeting will be the development of a statement of the transition services needs of the student and that the agency will invite the student. For a student with a disability beginning at age 16, or younger, if appropriate, the notice must indicate that a purpose of the meeting is the consideration of needed transition services for the student, that CCPS will invite the student, and identify any other agency that will be invited to send a representative.

Notice of any IEP team meeting to develop, review, or revise a child's IEP, including the determination of a child's educational placement must be given at least ten (10) calendar days before the meeting unless an expedited meeting is held to:

- Address disciplinary issues;
- Determine the placement of the child, if the child is a student with a disability and is not currently receiving educational services; or
- Meet other urgent needs of the child to ensure the provision of FAPE.

If neither parent can attend, CCPS shall use other methods to ensure parent participation, including individual or conference telephone calls. A meeting may be conducted without a parent in attendance if CCPS is unable to convince the parents that they should attend. The IEP team may make a placement decision without the involvement of the parents, if CCPS is unable to obtain the parental participation in the decision. In this case, CCPS must have a record of its attempts to arrange a mutually agreed on time and place, such as detailed records of telephone calls made or attempted and the results of those calls, copies of correspondence sent to the parents and any responses received, and detailed records of visits made to the parent's home or place of employment and the results of those visits.

A meeting does not include informal or unscheduled conversations involving CCPS personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP. A meeting also does not include preparatory activities that CCPS personnel engage in to develop a proposal or response to a parent's proposal that will be discussed at a later meeting.

The IEP Team

The IEP team includes:

- The child's parents, guardian, or parent surrogate;
- At least one of the child's general education teachers, if the child is or may be participating in the general education environment. If the child does not have a general education teacher or is younger than school age, an individual qualified to teach a child of that age;
- The child's special education teacher, or if appropriate, a service provider of the child;
- A representative of CCPS who is qualified to provide, or supervise the provision of specially designed instruction to meet the needs of students with disabilities and who knows the general curriculum and public agency resources available;
- An individual who can interpret the instructional implications of evaluations. This person can be one of CCPS team members listed above;

- If parents or CCPS choose, other individuals who have knowledge or special expertise regarding the child;
- If appropriate, a representative of another public agency that may provide or pay for transition services; and
- If appropriate, the child. The child shall be invited to, and is expected to attend and participate in the IEP team meeting if the purpose of the meeting is to consider transition services needs.

IEP Development, Review, and Revision

In developing, reviewing, or revising a child's IEP, the IEP team will consider and document:

- The child's strengths and parental concerns for enhancing their child's education;
- Results of the evaluation;
- Results of the child's performance on State or district-wide assessment programs, as appropriate;
- Communication needs; and
- Assistive technology devices and services needs of the child.
- Consideration of special factors, specific to the child, such as:
  - As in the case of a child whose behavior impedes the child's learning or that of others, consider as appropriate, positive behavior intervention strategies and supports to address that behavior;
  - As in the case of a child with limited English proficiency, consider the language needs of the child as they relate to the child's IEP;
  - In the case of a child who is blind or visually impaired, provide for instruction in Braille, including textbooks in Braille, and the use of Braille unless the IEP team determines after an evaluation of the child's reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child, including textbooks in Braille; and
  - In the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communication with peers and professional personnel in the child's language and communication mode, academic level and full range of needs, including opportunities for direct instruction in the child's language and communication mode.

If in considering the special factors above, an IEP team determines the child needs a particular device, service, intervention, accommodation, or program modification in order for the child to receive FAPE, the IEP team must include a statement to that effect in the child's IEP.

As a member of the IEP team, a general education teacher of the child shall, to the extent appropriate, participate in the development of the child's IEP. Participation includes assisting in the determination of appropriate positive behavioral interventions and strategies for the child, and supplementary aids and services, program modifications, and supports for school personnel.

IEP Content

The IEP is developed by the team and includes:

- Present levels of educational performance, including a description of how the identified disability affects involvement and progress in the general curriculum, or for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;
- Annual measurable goals and benchmarks or short-term instructional objectives related to meeting:
  - The child's needs that result from the disability to enable the child to be involved in and progress in the general curriculum, or for preschool children, as appropriate, to participate in appropriate activities, and
  - Each of the child's other educational needs that result from the disability;
- Appropriate objective criteria and evaluation procedures for determining whether the annual goals are being met;
- Specialized instruction, related services and supplementary aids and services, including staffing support to be provided to the child or on behalf of the child;
- A statement of needed interventions, accommodations, or other program modifications, including a particular device or service needed in order to provide FAPE;
- Program modifications or supports for school personnel that will be provided to enable the child:
  - To advance appropriately toward the annual goals,
  - To be involved in and progress in the general curriculum,
  - To participate in extracurricular and other nonacademic activities, and
  - Be educated and participate with other students with disabilities and without disabilities;
- An explanation of the extent, if any, to which the child will not:
  - Participate with nondisabled peers, and
  - Receive specialized instruction, related services, supplementary aids and services, staffing support, interventions, accommodations, or program modifications or supports, including a particular device or service in the general education setting in order to be provided FAPE;
- A statement of any individual accommodations that are needed for the child to participate in State and district-wide assessments, and
  - If your child will not participate in a particular State or district-wide assessment, the IEP team must document why that assessment is not appropriate for the child and how the child will be assessed;
- The projected date(s) services, interventions, accommodations, or other program modifications, including a particular device or service, will start, how often they will be provided, how long they will be provided, and where they will be provided; and
- A description of how parents will be regularly informed of their child's progress toward the annual goals and the extent to which that progress is sufficient to enable the child to achieve the goals within a year.

CCPS shall provide special education and related services to a child in accordance with the child's IEP and make a good faith effort to assist the child to achieve the goals and objectives or benchmarks listed in the IEP. CCPS, teacher, or another individual shall

not be held accountable if a child does not achieve the growth projected in the annual goals and benchmarks or objectives.

If a child requires extended school year services, the IEP must include the specific special education and related services to be provided beyond the regular school year. *Please refer to Part VII - Extended School Year Services for more specific information.*

Transition Services

Transition services are a coordinated set of activities that will promote movement from school to post-school activities, including post-secondary education, career and technology education, integrated employment, adult services, independent living, or community participation. This set of activities is based on a child's needs taking into consideration the child's preferences and interests and includes the course of study, related services, and community activities.

- Beginning when a child is 14, or younger, if appropriate, and updated annually, the IEP must include a statement of the child's transition service needs that focuses on the child's course of study.
- Beginning when a child is 16, or younger, if appropriate, the transition statement must also include a statement of interagency responsibilities or linkages, as appropriate.
- The requirement to provide transition services does not apply to a student with a disability who is convicted as an adult under State law and incarcerated in an adult correctional facility and whose eligibility for special education and related services will end before the student is eligible for release.

Placement

As a member of the IEP team, parents are included in decisions regarding placement of their child. To the maximum extent appropriate, students with disabilities, including students in public or private institutions or other care facilities, are educated with students who are not disabled.

- The educational placement for the child is determined annually, based on the child's IEP.
- Unless the child's IEP requires some other arrangement, the child is educated in the school the child would attend if not disabled.
- The IEP team may modify the child's IEP or placement if the child, convicted as an adult under State law, is incarcerated in an adult correctional facility, and the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

IEP Implementation

- The IEP must be implemented as soon as possible after it is developed, except if the meeting is held over the summer or a vacation period, or when there are circumstances that require a short delay, such as arranging transportation.
- CCPS must have an IEP in effect for the child at the beginning of the school year.
- The IEP must be accessible to every teacher, related services provider, and other

service provider who is responsible for implementing the child's IEP. Each individual identified above must be informed of their responsibilities related to implementing the child's IEP and the accommodations, modifications, and supports that must be provided.
- CCPS shall give parents a copy of their child's IEP at no cost to the parents.

Graduation Requirements

CCPS shall inform parents of the State and local graduation requirements and their child's progress toward meeting those requirements. When a student with a disability graduates from high school with a regular high school diploma, CCPS is to provide the parents notification of their child's pending graduation. Graduation with a regular high school diploma constitutes a change in placement and terminates the child's right to FAPE.

PART VII – EXTENDED SCHOOL YEAR SERVICES

Extended school year services (ESY) means the individualized extension of specific special education and related services that are provided to a student with a disability beyond the normal school year of CCPS, in accordance with the IEP, at no cost to the parents, and that meets the standards of the Maryland State Department of Education (CCPS). CCPS may not limit extended school year services to particular categories of disability or unilaterally limit the type, amount, or duration of those services.

Extended school year services are provided if the child's IEP team determines, on an individual basis, that the services are necessary for the provision of FAPE. Parents are to be notified of the availability of extended school year services that may be necessary to meet the unique needs of a student with a disability. The IEP team shall determine if any of the following factors will prevent the child from receiving FAPE from the child's educational program during the regular school year if the child does not receive extended school year services.

To determine whether the child should receive extended school year services, the IEP team shall consider:
- Whether the child's IEP includes annual goals related to critical life skills;
- Whether it is likely that the child would suffer a substantial regression of critical life skills caused by the normal school break and would fail to recover those lost skills in a reasonable time;
- The child's progress toward mastery of IEP goals and objectives;
- The presence of emerging skills or breakthrough opportunities;
- Interfering behaviors;
- The nature and/or severity of the disability; and
- Special circumstances.

PART VIII - TRANSITION FROM AN INFANTS & TODDLERS PROGRAM

CCPS and the local Infants and Toddlers Program shall invite parents to a meeting of an IEP team at least 90 days before the child's third birthday to determine if a child has a

disability or developmental delay that requires the provision of special education and related services. If the IEP team determines the child is a student with a disability or developmental delay, the IEP Team shall develop an IEP for the child. The child's IEP must be in effect on the child's third birthday.

PART IX - PROCEDURES REGARDING EDUCATIONAL RECORDS

Definitions

Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

Education records means the type of records covered under the definition of "education records" in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act [FERPA] of 1974).

Participating agency means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the IDEA.

Personally identifiable information includes:
- Name of the child, child's parents, or other family member;
- Address of the child;
- A personal identifier, such as the child's social security number; or
- A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

Safeguards

CCPS shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. One official of CCPS is responsible for protecting the confidentiality of personally identifiable information. In addition to the requirements of these procedural safeguards, federal and State laws and regulations also govern the protection of educational records. CCPS personnel who collect or use personally identifiable information must receive training regarding the State's policies and procedures on the confidentiality of personally identifiable information. Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

Consent

Parental consent must be obtained before personally identifiable information is disclosed to anyone other than officials of participating agencies collecting or using the information under the IDEA, or for any purpose other than meeting the requirements of providing a student with a disability FAPE under the IDEA. Disclosures addressed in

referral to and action by law enforcement and judicial authorities regarding reporting a crime committed by a student with a disability does not require parental consent to the extent that the transmission is permitted by FERPA.

An educational agency or institution may not release information from education records to participating agencies without parental consent unless authorized to do so under FERPA. CCPS has developed policies and procedures for public agencies, including sanctions, that the State uses to ensure that its policies and procedures are followed, and that the requirements for confidentiality, in accordance with IDEA and FERPA are met.

CCPS is required to have procedures in place for how adequate notice is provided to fully inform parents about the requirements of confidentiality of personally identifiable information including a:

- Description of the extent that the notice is given in the native languages of the various population groups in the State;
- Description of the children on whom personally identifiable information is maintained, and the types of information sought;
- Summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information;
- Description of policies and procedures used in the event that a parent refuses to provide consent; and
- Description of all of the rights of parents and children regarding this information, including the rights under FERPA and implementing regulations in 34 CFR §99.

Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the jurisdiction of the activity.

Access Rights

CCPS shall permit parents of a student with a disability to inspect and review any education records relating to the child that are collected, maintained, or used by the agency with respect to the identification, evaluation, and educational placement of the child, and the provision of FAPE to the child under the IDEA. CCPS shall comply with a request without unnecessary delay and before any meeting regarding an IEP, or any due process hearing, and in no case more than 45 days after the request has been made.

The right to inspect and review educational records under this section includes the right to:

- A response from the participating agency to reasonable requests for explanations and interpretations of the records;
- Request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parents from exercising the right to inspect and review the records; and
- Have a representative of the parents inspect and review the records.

CCPS may presume that parents have the authority to inspect and review records relating to their child unless CCPS has been advised that parents do not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

Record of Access

CCPS shall keep a record of individuals, other than parents and authorized employees of CCPS, obtaining access to education records collected, maintained, or used under Part B of the IDEA, including the name of the individual, the date access was given, and the purpose for which the individual is authorized to use the records. If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information. CCPS shall provide parents, on request, a list of the types and locations of education records collected, maintained, or used by the agency. CCPS may charge a fee for copies of education records that are made for parents if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. CCPS may not charge a fee to search for or retrieve information from education records.

Amendment of Records at Parent's Request

Parents who believe that information in the education records collected, maintained, or used under the IDEA is inaccurate or misleading or violates the privacy or other rights of the child may request the public agency, that maintains the information, to amend the information. CCPS shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request. If the agency decides to refuse to amend the information in accordance with the request, it shall inform the parents of the refusal and advise the parents of the right to a hearing to challenge the information in educational records. A hearing conducted to challenge information in educational records must be conducted in accordance with FERPA procedures as found in 34 CFR §99.22.

CCPS shall, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child. If, as a result of the hearing, CCPS decides that the information is inaccurate or misleading or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parents in writing. If, as a result of the hearing, CCPS decides that the information is not inaccurate or misleading or otherwise in violation of the privacy or other rights of the child, it shall inform the parents of the right to place in the records it maintains on the child, a statement commenting on the information or setting forth any reasons for disagreeing with the decision of CCPS. Any explanation placed in the records of the child must:

- Be maintained by CCPS as part of the records of the child as long as the record or contested portion is maintained by CCPS; and
- If the records of the child or the contested portion are disclosed by CCPS to any party, the explanation must also be disclosed to the party.

Procedures for the Destruction of Information

CCPS is required to inform parents when personally identifiable information collected, maintained, or used under the IDEA is no longer needed to provide educational services to the child. The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, the student's grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

Children's Rights

CCPS has policies and procedures that afford students a right to privacy similar to that which is given to their parents and suitable to the students ages and disabilities. Under the regulations for FERPA, the parent's rights regarding their child's education records are transferred to the child once the child reaches the age of 18, unless the child's disability makes the child incompetent under State law. If the rights accorded to parents under Part B of IDEA are transferred to a student who reaches the age of majority, consistent with §300.517, the rights regarding educational records in §§300.562-300.573 must also be transferred to the student. However, CCPS must provide any notice required under section 615 of IDEA to the student and the parents.

Disciplinary Information

CCPS may include in the records of a student with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement, to the same extent that disciplinary information is included in, and transmitted with the records of nondisabled students. The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child. If a child transfers from one school to another, the transmission of any of the child's records must include both the child's current IEP and any statement of current or previous disciplinary action that has been taken against the child.

PART X - DISCIPLINE OF STUDENTS WITH DISABILITIES

Definitions

For purposes of this part, the following definitions apply:

- Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c).
- Illegal drug means a controlled substance, but does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the

IDEA or under any other provision of federal law.

- Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

Change of Placement

For purposes of removals of a student with a disability from the child's current educational placement for disciplinary action in accordance with the IDEA and COMAR 13A.08.03, a change of placement occurs if a student with a disability is:

- Removed from the child's current placement for more that 10 consecutive school days; or
- Subjected to a series of removals that constitutes a pattern of removal that accumulates to more than 10 school days in a school year.

To determine if the removal constitutes a pattern of removal, the IEP team shall consider the:

- Length of each removal;
- Total amount of time the child is removed; and
- Proximity of the removals to one another.

Authority of School Personnel

Removal of a Student with a Disability for Not More than 10 Consecutive School Days

A student with a disability may be removed from the child's current placement for not more than 10 consecutive school days for any violation of school rules to the same extent removal is applied to students without disabilities. CCPS is not required to provide services to a student with a disability if services are not provided to students without disabilities.

Removal of a Student with a Disability for More than 10 School Days

A student with a disability may be removed from the child's current placement for up to 10 consecutive school days for each incident of misconduct in a school year, if the cumulative effect of such removals does not constitute a change of placement. For each period of removal after a student with a disability has been removed for the cumulative equivalent of 10 school days in a school year, the principal shall consult with the child's special education teacher to determine what services to provide to enable the child to appropriately:

- Progress in the general curriculum; and
- Advance toward achieving the goals of the child's IEP.

Interim Alternative Educational Setting

A child may be removed to an appropriate interim alternative educational setting for up

to 45 days if:

- The child carries or possesses a weapon to school or to a school function;
- The child knowingly possesses or uses illegal drugs at school or at a school function, or
- Sells or solicits the sale of a controlled substance at school or at a school function.

The IEP team must determine the interim alternative educational setting. Any interim alternative educational setting in which a child is placed must be selected so as to enable the child to:

- Continue to progress in the general curriculum, although in another setting;
- Continue to receive the special education and related services, and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in the IEP; and
- Receive services and modifications designed to address the behavior that resulted in the disciplinary action, so that it does not recur.

Parent Notification

On the date the principal decides to remove a student with a disability from the child's current placement for a violation of a school rule, the principal shall notify the parents of the decision and provide the parents with the procedural safeguards notice.

Functional Behavioral Assessment/Behavioral Intervention Plan

The IEP team shall meet within 10 business days of the removal of a student with a disability to develop an assessment plan, if the IEP team has not:

- Conducted a functional behavioral assessment; and
- Implemented a behavioral intervention plan to address the behavior before the behavior occurred, that resulted in the child's removal.

As soon as possible after the completion of assessments determined appropriate by the IEP team, the IEP team shall meet to develop appropriate behavioral interventions to address the behavior and implement the behavioral intervention plan. If the child has a behavioral intervention plan, the IEP team shall meet within 10 business days of the removal to review the behavioral intervention plan to address the behavior that resulted in the removal. The purpose is to determine if the behavioral intervention plan or the implementation of the behavioral intervention plan needs to be modified to address the behavior. For subsequent disciplinary removals of the child beyond the first 10 school days the child is removed during the school year, the IEP team shall meet to review the child's behavioral intervention plan. The IEP team shall modify the behavioral implementation plan and its implementation to the extent the IEP team determines necessary.

Authority of Hearing Officer

An administrative law judge (ALJ) may order a change in placement to an interim alternative educational setting for not more than 45 days if the ALJ in an expedited due

process hearing:

- Determines that CCPS has demonstrated by substantial evidence that maintaining the current placement of the student with a disability is substantially likely to result in injury to the child or others. As used in this part, substantial evidence means beyond a preponderance of the evidence.
- Considers the appropriateness of the child's current placement;
- Considers whether CCPS has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and
- Determines that the interim alternative educational setting proposed by CCPS in consultation with the child's special education teacher must enable the child to:
  - Continue to progress in the general curriculum, although in another setting;
  - Continue to receive the special education and related services, and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in the IEP; and
  - Receive services and modifications designed to address the behavior that resulted in the disciplinary action, so that it does not recur.

Manifestation Determination

The IEP team shall meet to determine whether a child's behavior, that resulted in a disciplinary removal, is a manifestation of the child's disability when the child:

- Is subject to a removal that constitutes a change of placement;
- Carries or possesses a weapon at school or a school function;
- Knowingly possesses or uses an illegal drug while at school or a school function; or
- Sells or solicits the sale of a controlled substance while at school or a school function.

The IEP team shall meet within 10 school days of the date that the principal takes disciplinary action for the removal of a student with a disability, to determine:

- Whether the child's behavior that resulted in disciplinary removal is a manifestation of the child's disability; and
- The services to be provided during the removal to ensure the provision of FAPE.

This review may be conducted at the same IEP team meeting that is convened to develop an assessment plan, if the IEP team has not conducted a functional behavioral assessment and implemented a behavioral intervention plan to address the behavior before the behavior occurred, that resulted in the child's removal.

In determining whether the child's behavior was a manifestation of the child's disability, the IEP team and other qualified personnel shall consider all relevant information in relation to the behavior that resulted in the disciplinary action including:

- Evaluation and diagnostic results, including the results of other relevant information supplied by the parents of the child;
- Observations of the child; and
- The child's IEP and placement.

To determine the behavior subject to the disciplinary action is not a manifestation of the child's disability, the IEP team and other qualified personnel must determine that:

- The child's IEP is appropriate;
- Special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the IEP and placement;
- The child's current placement is appropriate;
- The disability did not impair the child's ability to understand the impact and consequences of the behavior; and
- The disability did not impair the child's ability to control the behavior. If any of the determinations listed above are not met, the IEP team shall consider the behavior a manifestation of the child's disability.

If the IEP team, and other qualified personnel, determines that the child's behavior is a manifestation of the child's disability, the IEP team shall, as appropriate:

- Revise the child's IEP to address needed services;
- Revise the child's behavioral intervention plan to address the behavior;
- Review the child's placement; and
- Implement services as soon as possible.

If the IEP team determines the behavior is not a manifestation of the child's disability, the child may be disciplined in the same manner as students without disabilities, including a period of suspension or expulsion, applicable to students without disabilities. The IEP team shall determine the extent to which services are necessary during the period of suspension or expulsion to enable the child to appropriately progress in the general curriculum and advance toward achieving the goals of the child's IEP.

Upon initiation of disciplinary actions described above, the principal shall transmit the child's special education and disciplinary records to the local superintendent.

For Students Not Yet Eligible for Special Education and Related Services

A child who has not been determined to be eligible for special education and related services under the IDEA, and who has engaged in behavior that violated any rule or code of conduct of CCPS, including any behavior described above in *Authority of School Personnel* or *Authority of Hearing Officer*, the parents may assert any of the protections provided under the IDEA, if CCPS had knowledge that the child was a student with a disability before the behavior that precipitated the disciplinary action occurred.

CCPS must be deemed to have knowledge that a child is a student with a disability if:

- The parents of the child have expressed concern in writing (or orally if the parents do not know how to write or have a disability that prevents a written statement) to personnel of CCPS that the child is in need of special education and related services;
- The behavior or performance of the child demonstrates the need for these services;
- The parents of the child have requested an evaluation of the child; or

- The teacher of the child, or other personnel of CCPS have expressed concern about the behavior or performance of the child to the director of special education of CCPS, or to other personnel, in accordance with the agency's established child find or special education referral system.

CCPS would not be deemed to have knowledge that the child is a student with a disability if CCPS:

- Conducted an evaluation and determined that the child is not a student with a disability under the IDEA, or
- Determined that an evaluation was not necessary; and
- Provided parents with written notice, consistent with prior notice requirements, of its determination that the child was not a student with a disability as a result of the evaluation.

If CCPS does not have knowledge that a child is a student with a disability prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as those measures apply to students without disabilities who engage in comparable behaviors.

If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner. Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services. If the child is determined to be a student with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services to ensure the provision of FAPE.

Appeal of Decisions Related to Discipline

Except as provided below, the requirements and procedures for due process, as described in *Part XIV - Resolving Disagreements*, apply if the parents request a due process hearing to challenge a manifestation determination, made by the IEP team, that the behavior of the child was not a manifestation of the child's disability.

If the child's parents disagree with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement under the discipline procedures, the parents may request a due process hearing. If parents request a due process hearing, CCPS shall arrange for an expedited due process hearing.

In reviewing a decision with respect to the manifestation determination, the ALJ shall determine whether CCPS has demonstrated that the child's behavior was not a manifestation of the child's disability consistent with the requirements for manifestation determination described above in *Manifestation Determination*. In reviewing a decision to place the child in an interim alternative educational setting, the ALJ shall apply the standards described above in *Authority of the Hearing Officer*. If parents request a due process hearing to challenge the interim alternative educational setting or the manifestation determination, the child must remain in the interim alternative educational

setting pending the decision of the ALJ or until the end of the 45-day placement, whichever occurs first, unless the parents and CCPS agree otherwise.

If a child is placed in an interim alternative educational setting, and school personnel propose to change the child's placement after the expiration of the interim alternative educational setting, during the pendency of any proceeding to challenge the proposed change in placement, the child must remain in the child's current placement (placement prior to the interim alternative educational setting). If school personnel maintain that it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings, CCPS may request an expedited due process hearing.

In determining whether the child may be placed in the alternative educational setting or in another appropriate placement, the ALJ shall apply the standards described above in *Authority of the Hearing Officer*. A placement ordered by an ALJ may not be longer than 45 days. The procedure may be repeated, as necessary.

Referral to Law Enforcement and Judicial Authorities

If a student with a disability is suspected of committing a crime, CCPS may report the crime to the appropriate authorities as they would if a student without disabilities committed a like offense. Local and State law enforcement officials and judicial authorities may exercise their duties and responsibilities and apply all applicable federal and State laws to crimes, which may have been committed by a student with a disability. CCPS reporting a crime may transmit copies of the child' s special education record and disciplinary records only to the extent that the transmission is permitted by the FERPA.

PART XI - PLACEMENT OF STUDENTS IN PRIVATE SCHOOLS BY THEIR PARENTS

Placement of Children by Parents when FAPE is at Issue

The IDEA does not require CCPS to pay for the cost of education, including special education and related services, of a student with a disability at a private school or facility if CCPS made FAPE available to the child and the parents elected to place the child in a private school or facility. However, CCPS shall include the child in the population whose needs are addressed with regards to services provided to students with disabilities placed in private schools by their parents, in accordance with the federal regulations governing students with disabilities enrolled by their parents in private schools. Disagreements between parents and public agencies regarding the availability of FAPE and financial responsibility are subject to due process hearing procedures under the IDEA. *Please refer to Part XIV – Resolving Disagreements for more specific information.*

If the parents of a student with a disability, who previously received special education and related services under the authority of CCPS, enroll the child in a private preschool, elementary, or secondary school without the consent or referral of CCPS, an ALJ or a

court, may require CCPS to reimburse parents for the cost of that enrollment if an ALJ or a court finds that CCPS had not made FAPE available to the child in a timely manner prior to that enrollment, and that the private placement is appropriate. A parental placement may be found to be appropriate by an ALJ or a court even if it does not meet the State standards that apply to education provided by public agencies.

Limitation on Reimbursement

Reimbursement may be reduced or denied by an ALJ or a court if:

- At the most recent IEP team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by CCPS to provide FAPE, including stating their concerns and their intent to enroll their child in a private school at public expense; or
- At least 10 business days (including any business days that occur on a holiday) prior to the removal of the child from the public school, the parents did not give CCPS written notice of their intent to remove the child, including their concerns regarding their child's public placement; or
- If prior to the parent's removal of the child from the public school, CCPS informed the parents, through the prior notice requirements of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or
- Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

The cost of reimbursement may not be reduced or denied for failure of the parents to:

- Inform the IEP team at the most recent IEP team meeting that the parents attended, prior to removal of the child from the public school that they were rejecting the placement proposed by CCPS to provide FAPE, including stating their concerns and the intent to enroll the child in a private school at public expense, or
- Give CCPS written notice of their intent to remove the child, including their concerns regarding the child's public placement at least 10 business days (including any business days that occur on a holiday) prior to the child's removal from the public school if:
  - The parent is illiterate and cannot write in English,
  - Compliance with the notice as described above would likely result in physical or serious emotional harm to the child,
  - The school prevented the parent from providing the notice, or
  - The parents had not received notice, under the IDEA notice requirements described above.

Students with Disabilities Enrolled by Their Parents in Private Schools

CCPS shall make special education and related services available to a child in accordance with the federal regulations for children with disabilities enrolled by their parents in private schools. No private school student with a disability has an individual right to receive some or all of the special education and related services that the child would

receive if enrolled in a public school. Decisions regarding which students receive services, what services are provided, how and where services will be provided, and how services will be evaluated are made by CCPS after consultation with appropriate representatives of private school children. If a student with a disability attending a private or religiously affiliated school will receive special education and related services CCPS will initiate and conduct meetings to develop, review, and revise a service plan for the child

If the parents of a student with a disability enroll their child in a private or religiously affiliated school, the parents' rights to file for a due process hearing applies only to child find issues. Child find is the procedure that CCPS use to identify, locate, and evaluate all students with disabilities, residing within the jurisdiction of CCPS, including children attending private and religiously affiliated schools. An individual may file a written complaint with CCPS when the individual believes CCPS has failed comply with the federal regulations under the IDEA concerning students with disabilities enrolled by their parents in private schools. *Please refer to Part XIV - Resolving Disagreements for more specific information.*

PART XII - PARENT SURROGATE

CCPS shall ensure an individual is assigned to act as a surrogate for the parents of a child when:

- No parent can be identified;
- The whereabouts of the parents cannot be located, after reasonable efforts; or
- The child is a Ward of the State.

CCPS has a procedure for determining whether a child needs a parent surrogate and for assigning a parent surrogate to the child. A parent surrogate is a person appointed by the local school superintendent to represent the child as parents would in the educational decision making process. The parent surrogate may represent the child in all matters relating to the identification, evaluation, and the educational placement of the child, and the provision of FAPE, including the appeal process.

A person selected as a surrogate:

- Cannot be an employee of any public agency that is involved in the education or care of the child;
- Must have no interest that conflicts with the interest of the child that the individual represents; and
- Is to have knowledge and skills that ensure adequate representation of the child.

CCPS may select as a surrogate an individual who is an employee of a nonpublic agency that only provides non-educational care for the child, and who has no interest that conflicts with the interest of the child the individual represents, and who has knowledge and skills that ensure adequate representation of the child. An individual is not considered an agency employee solely because that individual may be paid by an agency to serve as a foster parent or a parent surrogate.

PART XIII - TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY

Under IDEA, the parents of a student with a disability have certain rights in the special education decision making process. Under Maryland law, in certain limited circumstances, all rights accorded to the parents under IDEA shall transfer to a student with a disability. This transfer occurs when the student reaches the age of 18 years, if the student has not been adjudged incompetent under State law and there is documentation that:

- The parents are unavailable or unknown, and the child requests that the parental rights be transferred to the child rather than have a parent surrogate appointed;
- The parents have not participated in the special education decision making process for the child after repeated attempts by CCPS to involve the parents over the previous year;
- The parents have affirmatively rejected participation in the special education decision making process;
- The parents cannot participate in the special education decision making process due to prolonged hospitalization, institutionalization, or serious illness or infirmity of one or both of he parents and the parents have consented to the transfer of rights to the child;
- The parents cannot participate in the special education decision making process due to extraordinary circumstances beyond their control, and the parents have consented to the transfer of rights to the child; or
- The child is living outside of the parents' home and is not in the care or custody of another public agency.

If the parents of a student with a disability, with whom the child resides, do not consent to the transfer of rights to the child at the age of 18, and the student has not been adjudged incompetent under State law, either party may file for due process to determine whether the rights should be transferred.

If a student with a disability has been represented by a parent surrogate in accordance with federal and State laws and regulations, CCPS shall provide any written notice required under federal and State laws and regulations to both the student and parent surrogate. All other rights afforded the parent surrogate under IDEA shall transfer to the student if the student has not been adjudged incompetent under State law and the student requests that the rights transfer to the student.

PART XIV RESOLVING DISAGREEMENTS

Written Complaint Procedures

CCPS has adopted written complaint procedures for resolving complaints filed by an individual or organization. CCPS disseminates the State's procedures for resolving complaints to parents and other interested individuals including Parents' Place of Maryland, advocacy agencies, independent living centers, and other appropriate entities. Individuals may obtain a copy of the State complaint procedures by sending a written request addressed to the Division of Special Education/Early Intervention Services,

MSDE, 200 West Baltimore Street, Baltimore, Maryland 21201. The procedures are also available on the MSDE web-site: www.MSDE.state.md.us.

Filing a Written Complaint with MSDE

If an individual or an organization believes that a federal or State law or regulation concerning the identification, evaluation, the educational placement of the child, and the provision of FAPE, including the appeal process is not being followed, an individual or organization has the right to file a written and signed complaint with the Assistant State Superintendent, Division of Special Education/Early Intervention Services, MSDE, 200 West Baltimore Street, Baltimore, Maryland 21201.

The written complaint shall include:

- A statement that CCPS has violated a requirement of federal or State law or regulation; and
- The facts upon which the statement is based.

This must include any documentation supporting the allegation(s). Complaints must be filed within one (1) year of the date that the alleged violation occurred, unless a longer period is reasonable because the violation is continuing. If the complainant is requesting compensatory services, the complaint must be received within three (3) years of the date of the alleged violation. MSDE is to investigate and issue their findings within 60 calendar days of receipt of the written complaint. MSDE may permit an extension of the 60-day timeline only if exceptional circumstances exist regarding a particular complaint.

At a minimum, MSDE shall:

- Conduct an independent on-site investigation if CCPS determines an investigation is necessary;
- Provide the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
- Review all relevant information and make an independent determination as to whether CCPS has violated requirements of federal and State laws or regulations concerning the identification, evaluation, the educational placement of the child, and the provision of FAPE; and
- Issue a written decision to the complainant that addresses all allegations in the complaint and contains findings of fact and conclusions, and the reasons for the final decision of MDSE. The final decision shall include procedures for the effective implementation of the final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance.

Resolving A Complaint

In accordance with MSDE's general supervisory authority under the IDEA, if MSDE determines CCPS has failed to provide appropriate services, the final written decision shall include how CCPS is to remediate the denial of those services, including, as

appropriate, the awarding of monetary reimbursement or other corrective action(s) appropriate to the needs of the child and provide appropriate future services for all students with disabilities.

Complaints and Due Process Hearings

If MSDE receives a written complaint that is also part of a due process hearing, or if a written complaint contains multiple issues of which one or more are part of a hearing, MSDE must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of that due process hearing. However, any issue in the complaint that is not part of the due process hearing must be resolved using the timeline and procedures described above. If an issue is raised in a complaint that has previously been decided in a due process hearing, involving the same parties, the hearing decision is binding, and MSDE shall inform the complainant to that effect. A complaint alleging CCPS has failed to implement a due process hearing decision shall be resolved by MSDE.

Mediation Procedures

Each public agency must ensure that procedures are established and implemented to allow parties (parents or public agencies) to appropriately resolve disputes involving any matter concerning the proposal, refusal, or consent for identification, evaluation, educational placement, the provision of a FAPE, or disciplinary procedures through a mediation process. At a minimum, mediation must be available whenever a due process hearing is requested. The procedures must ensure that the mediation process is a voluntary process available to either parents or CCPS. The request for mediation may not be used to deny or delay either party's rights under federal or State laws or regulations.

An employee of the Office of Administrative Hearings (OAH), selected on a rotating basis, who is qualified, impartial, and trained in effective mediation techniques, conducts mediation. An individual who serves as a mediator is not an employee of CCPS or State agency responsible for the provision of services to students with disabilities, or CCPS. A mediator must not have a personal or professional conflict of interest. A person who otherwise qualifies as a mediator is not an employee of CCPS or State agency responsible for the provision of services to students with disabilities, or CCPS, solely because that individual is paid by the State to serve as a mediator.

- CCPS pays for the costs of the mediation process, including the cost of a meeting with parents to encourage mediation.
- CCPS maintains a list of qualified mediators who are knowledgeable of the laws and regulations related to the provision of special education and related services.
- A request for mediation is made in writing to CCPS responsible for the education of the child. The Mediation/Due Process Request Form, developed by MSDE and OAH, is available from the public agency where the child attends school. For assistance contact CCPS's special education office.
- Within three (3) days of receipt of the written request for mediation it is the responsibility of CCPS to send a facsimile (fax) of the written request to the OAH.

- Parents or CCPS may be accompanied and advised by counsel during mediation.
- A mediation session will be scheduled to occur within 20 days of the receipt of a written request at a location convenient to parents and CCPS.
- Mediation sessions are closed proceedings. Discussions that occur during mediation must be confidential and cannot be used as evidence in any subsequent due process hearing or civil action. Parents or CCPS may be asked to sign a confidentiality pledge before the start of the mediation.
- An agreement reached by the parties to the dispute in the mediation process must be set forth in a written mediation agreement.

Meeting to Encourage Mediation

CCPS may establish procedures to require parents who elect not to use the mediation process to meet at a time and location convenient to the parents, with a disinterested party, who is under contract with the Parents' Place of Maryland, Inc., Families Involved Together, Inc., or an appropriate alternative dispute resolution entity who would explain the benefits of the mediation process and encourage parents to use the process. CCPS may not deny or delay the parents right to a due process hearing if parents fail to participate in the meeting to encourage the use of mediation.

Due Process Hearings

Parents or CCPS may initiate a due process hearing on any matter relating to the proposal, refusal or consent for identification, evaluation, educational placement, and the provision of FAPE, or disciplinary issues. *Please refer to Part X – Discipline of Students with Disabilities for more specific information.* Whenever a due process hearing is initiated, CCPS shall inform the parents of the availability of mediation. CCPS is to give parents a copy of all procedural safeguards and inform parents of free or low-cost legal and other relevant services in the area. At any time, upon the request of parents, CCPS is to provide parents with information about available free or low-cost legal and other relevant services in the area.

Parent Notice

The Mediation/Due Process Hearing Request Form, developed by MSDE and OAH, is available from CCPS where the child attends school. CCPS may not deny or delay the parents right to a due process hearing because the parents failed to provide a written request. For assistance completing the form, contact CCPS's special education office. A request for a due process hearing made by the parents or the attorney representing the child must be made in writing to CCPS responsible for the education of the child and include:

- The name of the child;
- The address of the residence of the child;
- The name of the school the child is attending;
- A description of the problem(s) or area(s) of disagreement related to what CCPS is proposing, refusing, or changing, including facts relating to the problem; and
- A proposed resolution for the problem or disagreement to the extent known and

available to the parents at the time.

Within three (3) days of receipt of the written request for a due process hearing, it is the responsibility of CCPS to send the facsimile (fax) of the written request to OAH. Upon the initiation of a due process hearing, it is also the responsibility of OAH to inform parents of free or low-cost legal and other relevant services in the area. CCPS is responsible for informing parents of information regarding the possible reimbursement of attorneys' fees incurred as a result of a due process hearing or court action. *Please refer to Part XV - Attorneys' Fees for more specific information.*

Impartial Hearing Officer

OAH will assign an ALJ to serve as an impartial hearing officer from a list of ALJs approved to serve. The list must include a statement of the qualifications of each of those persons. An ALJ is not an employee of CCPS or any public agency involved in the education or care of the child and shall not have any personal or professional interest which would conflict with objectivity in the hearing. The ALJ is not an employee of CCPS solely because the ALJ is paid as a hearing officer. OAH will schedule the due process hearing to be conducted within 30 days of receipt of the written request. OAH will notify parents and CCPS of the right to mediation, if mediation has not been requested.

An ALJ shall conduct the due process hearing according to the requirements of applicable federal and State laws and regulations. During a due process hearing, an ALJ may:

- After the review of the educational record of the child, dismiss any request for a review, which does not relate to a matter involving the identification, evaluation, educational placement of a student, or the provision of FAPE;
- Require the parents and CCPS to participate in a pre-hearing conference prior to the due process hearing;
- Hear any testimony that it considers relevant;
- Require an independent evaluation and/or call upon an impartial expert witness in the diagnosis or education of students with disabilities whose testimony shall be on the record and whose costs shall be paid by CCPS.

Due Process Hearing Rights

Any party to a due process hearing has the right to:

- Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of students with disabilities;
- Present evidence and confront, cross-examine, and compel the attendance of witnesses;
- Prohibit the introduction of any evidence at the hearing, that has not been disclosed to that party at least five (5) business days before the hearing;
- Obtain a written, or at the option of the parents, an electronic verbatim record of the hearing; and

- Obtain a written, or at the option of the parents, an electronic findings of fact and decisions.

At least five (5) business days prior to the hearing, each party shall disclose to all other parties all evaluations completed by that date, and recommendations based on the party's evaluations that the party intends to use at the hearing. A hearing officer may bar any party that fails to comply with this requirement from introducing the relevant evaluation or recommendations at the due process hearing without the consent of the other party.

Parental Rights at a Due Process Hearing

Parents involved in due process hearings must be given the right to have the child who is the subject of the hearing present and open the hearing to the public. The record of the hearing and the findings of fact and decisions must be provided at no cost to the parents. The parents have the right to inspect and review, at reasonable times, before a due process hearing any education records relating to the child, as described in *Part IX - Procedures Regarding Educational Records*.

Timelines and Convenience of Due Process Hearings

- The ALJ is required to make a final decision and the decision must be mailed to the parents and CCPS within 45 days of receiving the written request for a hearing.
- An ALJ may grant specific extensions of time beyond 45 days at the request of either party.
- The ALJ is to transmit a copy of the hearing decision to CCPS upon the close of the hearing record.
- Each due process hearing involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and the child involved.
- The CCPS shall transmit the decision(s) to the State Advisory Committee and make decisions available to the public, in a manner consistent with State and federal confidentiality requirements, after removing personally identifiable information.

Expedited Due Process Hearing

If, at the time of the request for a due process hearing, the child is not enrolled and attending an educational program or the request for a due process hearing involves a disciplinary issue, an expedited hearing will be scheduled. An expedited due process hearing shall meet the requirements of the due process hearing rights described above. Regardless of which party (parents or CCPS) requests an expedited due process hearing the timeline shall be the same. All requests for an expedited due process hearing will be considered by OAH. An expedited due process hearing shall be held within 20 days of receipt of a written request and a written decision will be issued within 15 days of the expedited due process hearing.

Child's Status During Proceedings

The child will stay in the child's present educational setting pending administrative and

judicial proceedings unless the parents and CCPS agree otherwise. If initial admission to public school is involved, the child must be placed in public school, if the parents consent, pending the completion of all administrative and judicial proceedings, unless the parents and CCPS agree otherwise. If in a decision of an ALJ, the ALJ agrees with a child's parents that a change of placement is appropriate, that placement shall be treated as an agreement between the State or CCPS and the parents of the child. For information on placement during appeals of disciplinary action, *Please refer to Part X - Discipline of Students with Disabilities for more specific information.*

Civil Action

An ALJ decision is final unless appealed by either the parents or CCPS. Any party aggrieved by the findings and decisions has the right to bring a civil action with respect to the complaint presented in the due process hearing. Parents may file for civil action in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy within 180 days of the issuance of the final decision. Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, The Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other federal laws protecting the rights of students with disabilities. Except, that before filing for civil action under these laws the parents or CCPS must have exhausted the procedures for a due process hearing with OAH under section 615 of the IDEA.
In any action, the court will:

- Receive the record of the due process hearing;
- Hear additional evidence at the request of either the parents or CCPS;
- Base its decision on the preponderance of evidence; and
- Grant the relief it determines to be appropriate.

PART XV – ATTORNEYS' FEES

In any action or proceeding brought under section 615 of the IDEA, a court may award reasonable attorneys' fees as part of the costs to the parents of the student with a disability that is the prevailing party. Funds under Part B of the IDEA may not be used to pay attorneys' fees or costs of a party related to an action or proceeding under section 615 of the IDEA. This does not preclude CCPS from using funds under Part B of the IDEA for conducting an action or proceeding under section 615 of the IDEA. Because the parent's right to recover attorneys' fees depends upon meeting certain conditions set out in the IDEA, parents should discuss this matter with their attorney.

A court awards reasonable attorneys' fees consistent with the following:

- Fees awarded under section 615(i)(3) of the IDEA must be based upon the prevailing rate in the community in which the action or proceeding arose for the kind and quality of services furnished.
- No bonus or multiplier may be used in calculating the fees awarded.

Prohibition of Attorneys' Fees and Related Costs

Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under section 615 of the IDEA for services performed subsequent to the time of a written offer of settlement to the parents if:

- The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;
- The offer is not accepted within 10 days; and
- The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the State, for a mediation that is conducted prior to the filing of a request for a due process hearing. Notwithstanding the prohibition of attorneys' fees and related costs described above, an award of attorneys' fees and related costs may be made to parents who are the prevailing party and who were substantially justified in rejecting the settlement offer.

Reduction in Attorneys' Fees or Related Costs

The court reduces, accordingly, the amount of the attorneys' fees awarded under section 615 of the IDEA, if the court finds that:

- The parents, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;
- The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;
- The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
- The attorney representing the parents did not provide CCPS the appropriate information in the written request for a due process hearing, as required.

Exception to Reduction in Attorneys' Fees or Related Costs

A reduction in attorneys' fees or related costs does not apply if CCPS:

- Unreasonably delayed the final resolution of the due process hearing or judicial proceeding; or
- Was in violation of section 615 of the IDEA.

FREE AND LOW COST LEGAL SERVICES

1. Advocates for Children and Youth 1-410-547-9200
2. Lawyer Referral Services 1-800-233-7201
3. Legal Aid Bureau, Inc. 1-800-679-8813
4. Maryland Coalition for Inclusive Education (MCIE) 1-410-859-5400
5. Maryland Disability Law Center (MDLC) 1-800-233-7201
6. Maryland Volunteer Lawyers Services 1-800-510-0050
7. University of Maryland Law Clinic 1-410-706-2015 & 410-706-8036 (TDD)
8. Lawyer Referral Service of Carroll County 1-800-649-1090
9. Maryland State Department of Education Division of Special Education/Early Childhood 1-410-767-0244
10. Samuel Sperling 1-410-653-0141

RECEIPT OF PARENTAL RIGHTS DOCUMENT

NAME OF STUDENT: _____

DATE OF BIRTH: ____/____/____

SCHOOL: _____

This is to verify that I have received a copy of Procedural Safeguards, Parental Rights which includes the procedural safeguard provisions of the IDEA Amendments of 1997, (the educational decision-making process). These rights have been explained to me by:

_____ _____

Name **Position**

____/____/____

Date

I understand that my rights include the right to receive:

(1) this and all other written notices in the language I understand (primary language) or if needed, a translation of such orally, in sign language, or in braille as appropriate, and

(2) answers from school personnel to additional questions I may have.

(3) a copy of the complete procedural safeguards, at a minimum, upon the initial referral of my child for an evaluation, with each notice of a meeting to develop, reviews, or revise my child's IEP, with each notice of a reevaluation; and if I file a written request for a due process hearing.

My signature below indicates that I received the booklet and understand its contents.

Signature of Parent / Parent Surrogate / or Guardian: _____

Date Signed: ____/____/____

APPENDIX B

COUNTY PUBLIC SCHOOLS — DEPARTMENT OF SPECIAL EDUCATION

INDIVIDUALIZED EDUCATION PROGRAM (IEP)

☐ Initial IEP
☑ Review / Revision

Date: 10/15/01

☒ Proposed Copy
☐ Approved Copy

tion 1. Student Information

Case Manager: Mary Ellen Stephens
Student:
Date of Birth:
Present School:
Home School: Mitchell Elementary
Grade at IEP Development / Review: 3 Disability Code: 14

Section II. Dates

Date of IEP Development / Review Meeting: 10/15/01
Date of Initial IEP: 9/27/96
Date of Most Recent Evaluation: 8/15/01 (Meeting to review results)
Projected Date of Reevaluation: 10/17/03 (Meeting to review results)
Annual Review Deadline: 10/15/02
Other Review Dates: 5/14/01

Section III. Present Level of Educational Performance, including explanation, *IN EACH AREA AFFECTED BY THE DISABILITY*

READING Measured Level (s): readiness AE 2-6 6/99 Brigance	Description of abilities and difficulties / explanation of measured level (s) Strength: looking at pictures, naming pictures, naming actions in pictures, recognizes first name, matches letters in first name, follows picture schedule 1-4 items, familiar with classroom routine, discriminates letters A-P	discriminating name in a group, spelling name orally, matching alphabet letters, recognizing functional sight words
MATH AE 1-6 6/99 Brigance PEP-R overall 25 month devel. age	rote counts 1-5, gives "one," counts 1-5 objects, big/little, "all," in, out, on, up, down, discriminates numbers 1-10	more/less, rote counting 1-10, long/short, same/different, more/less, coin recognition, number identification 1-20, number in a set,
WRITTEN EXPRESSION AE 1-6 [illegible] LAP-D	scribbles, imitates verticle and horizontal line, holds crayon to mark	imitating circle & cross, holding crayon/pencil with fingers, connecting dots to make lines and shapes
SPEECH	improved production of s & f, has g & k in initial position, but not in final, improved tolerance of lip pressure	misarticulates w, r, l, th, z, l blends, has trouble lifting and lateralizing tongue
LANGUAGE	combines 2, 3 and 4 words into meaningful phrases, improved comprehension of concepts and literal questions or role questions	expand use of pronouns, adjectives, prepositions, and negations, ask simple questions, part to whole relationships
SOCIAL / EMOTIONAL / BEHAVIORAL		
COGNITIVE / INTELLECTUAL Leiter-R Brief IQ 48 mod delay, Vineland 48 Low 8/15/01 CARS 8/31/00	(including adaptive behavior, requisite learning behaviors, etc., as appropriate) relative strengths; concrete reasoning and perceptual skills	Weaknesses; abstract reasoning, nonverbal concept formation, significant level of distractibility, adaptive behavior deficits non-autistic range on the CARS with score of 27.5 a score of 30-36 would fall in the mild to moderate range
MOTOR OT	removing shoes & socks, scribbles on paper, beginning to tolerate various positions and sensory input	improve ADL functioning, improve fine motor skills for classroom performance
PT	improving balance, mobility, posture, walks independently and safely on level surfaces	functional mobility, postural alignments, basic locomotor components
VOCATIONAL Adapted PE [illegible]	basic knowledge of object control skills - elementary stages demonstrated	locomotor skills, balance, basic coordination

Measured Level: SS = Standard Score
3 - Part White - Student File Yellow - Parent Pink - Teacher

Part 1 of 31 Pages
Ref: V: Content of IEP SE170 (8/99)

BEST AVAILABLE COPY

DEPARTMENT OF SPECIAL ED — ☒ Proposed Copy ☐ Approved Copy

Date of IEP Meeting: 10/15/01
Service Provider: special education instructional team

CONCERNING PROGRESS ON ANNUAL IEP GOALS.

Scheduled Review Date	Date Reviewed	Result of Evaluation	Comments
1/29/02			
4/11/02			
6/12/02			
10/15/02			

SE 170 (7-00)

COUNTY PUBLIC SCHOOLS
INDIVIDUALIZED EDUCATION PROGRAM (IEP)
Section I ANNUAL GOAL AND SHORT-TERM OBJECTIVES/BENCHMARKS

Student: Area: *Reading*

EACH MARKING PERIOD PARENTS WILL BE NOTIFIED IN WRITING CONCERNING PROGRESS ON ANNUAL IEP GOALS.
(See Attached Goal Criteria Addendum)

GOAL:	Procedure and Criteria for Completion	Scheduled Review Date	Date Reviewed	Result of Evaluation	Comments
will demonstrate early spelling and language arts skills	progress on or mastery of 8/8 short term objectives	1/29/02			
		4/11/02			
	data collection	6/12/02			
		10/15/02			
Short-Term Objectives/Benchmarks **The student will:**					
1. select first and last name in print out of a field of 8 names: A. from a list of names B. in classroom environment (ie. on cubbie, chair)	90% accuracy	1/29/02			
		4/11/02			
	across data collectors	6/12/02			
		10/15/02			
2. spell first and last name both orally and in print	90 % accuracy adaptive keyboards, manipulatives ie. rubber stamp	1/29/02			
		4/11/02			
	across data collectors	6/12/02			
		10/15/02			
3. match upper case alphabet letters	90% accuracy	1/29/02			
		4/11/02			
	across data collectors	6/12/02			
		10/15/02			
4. identify upper and lower case alphabet letters	90% accuracy	1/29/02			
		4/11/02			
	across data collectors	6/12/02			
		10/15/02			

Student File Parent Teacher Ref V: Content of IEP SE170 (8/99)

INDIV ..ED EDUCATION PROGRAM (IEP)
Section . .NNUAL GOAL AND SHORT-TERM OBJECTIVES/BENCHMARKS

Date of IEP Meeting: *10/15/01* ☒ Proposed Copy ☐ Approved Copy

Service Provider: *special education instructional team*

Student:

Area: *Reading*

EACH MARKING PERIOD PARENTS WILL BE NOTIFIED IN WRITING CONCERNING PROGRESS ON ANNUAL IEP GOALS.
(See Attached Goal Criteria Addendum)

GOAL:	Procedure and Criteria for Completion	Scheduled Review Date	Date Reviewed	Result of Evaluation	Comments
continued					
Short-Term Objectives/Benchmarks The student will:					
5. match 5 environmental sight words or logos	90% accuracy across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
6. describe the body parts for each of the five senses	90% accuracy across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
7. describe/tell the role of 20 occupations	90% accuracy across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
8. use the sense of touch to identify 25 everyday objects that are out of sight.	90% accuracy across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			

INDIVI ..ED EDUCATION PROGRAM (IEP)
Section . .NNUAL GOAL AND SHORT-TERM OBJECTIVES/BENCHMARKS

Date of IEP Meeting: *10/15/01* ☒ Proposed Copy ☐ Approved Copy

Service Provider: *special education instructional team*

Student:

Area: *Math*

EACH MARKING PERIOD PARENTS WILL BE NOTIFIED IN WRITING CONCERNING PROGRESS ON ANNUAL IEP GOALS.
(See Attached Goal Criteria Addendum)

GOAL:	Procedure and Criteria for Completion	Scheduled Review Date	Date Reviewed	Result of Evaluation	Comments
will demonstrate early math concepts	progress on or mastery of 11/11 short term objectives data collection	1/29/02 4/11/02 6/12/02 10/15/02			
Short-Term Objectives/Benchmarks The student will:					
1. identify the colors red, yellow, orange, blue, green, purple, black, brown, white	90% accuracy across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
2. name the colors red, yellow, orange, blue, green, purple, black, brown, white	90% accuracy across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
3. rote count from 1 to 10	90% accuracy across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
4. match non-identical numbers 1 through 10 (ie. typed, handwritten, 3-d shapes)	90% accuracy across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			

INDIVII ED EDUCATION PROGRAM (IEP)
Section IV . ..NNUAL GOAL AND SHORT-TERM OBJECTIVES/BENCHMARKS

Date of IEP Meeting: *10/15/01* ☒ Proposed Copy ☐ Approved Copy

Service Provider: *special education instructional team*

Student:

Area: *Math*

EACH MARKING PERIOD PARENTS WILL BE NOTIFIED IN WRITING CONCERNING PROGRESS ON ANNUAL IEP GOALS.

(See Attached Goal Criteria Addendum) GOAL:	Procedure and Criteria for Completion	Scheduled Review Date	Date Reviewed	Result of Evaluation	Comments
continued					
Short-Term Objectives/Benchmarks The student will:					
5. name numbers 1 through 10	90% accuracy across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
6. identify: A. long/short B. same/different c. more/less	90% accuracy across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
7. identify: A. coins (penny, nickel, dime, quarter) B. match coins	90% accuracy across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
8. name basic shapes (circle, square, triangle, rectangle, heart, star)	90% accuracy across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			

UNTY PUBLIC SCHOOLS — DEPARTMENT OF SPECIAL EI ...N

INDIVI ED EDUCATION PROGRAM (IEP)
Section . .NNUAL GOAL AND SHORT-TERM OBJECTIVES/BENCHMARKS

Date of IEP Meeting: *10/15/01* ☒ Proposed Copy ☐ Approved Copy

Service Provider: *special education instructional team*

Student:

Area: *Math*

EACH MARKING PERIOD PARENTS WILL BE NOTIFIED IN WRITING CONCERNING PROGRESS ON ANNUAL IEP GOALS.

(See Attached Goal Criteria Addendum) GOAL:	Procedure and Criteria for Completion	Scheduled Review Date	Date Reviewed	Result of Evaluation	Comments
continued					
Short-Term Objectives/Benchmarks The student will:					
9. identify shapes of objects found in the environment (circle, square, triangle, rectangle - ie. a plate is a circle, a book is a rectangle)	90% accuracy across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
10. select the next item in a 2 - part alternating pattern	90% accuracy across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
11. give a specified number of objects on request - 1 through 5	90% accuracy across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			

INDIVI ED EDUCATION PROGRAM (IEP)
Section . NUAL GOAL AND SHORT-TERM OBJECTIVES/BENCHMARKS

Date of IEP Meeting: *10/15/01* ☒ Proposed Copy ☐ Approved Copy

Service Provider: *special education instructional team*

Student:

Area: *Functional Life Skills*

EACH MARKING PERIOD PARENTS WILL BE NOTIFIED IN WRITING CONCERNING PROGRESS ON ANNUAL IEP GOALS.
(See Attached Goal Criteria Addendum)

GOAL:	Procedure and Criteria for Completion	Scheduled Review Date	Date Reviewed	Result of Evaluation	Comments
will demonstrate improved functional life skills	progress on or mastery of 6/6 short term objectives data collection	1/29/02 4/11/02 6/12/02 10/15/02			
Short-Term Objectives/Benchmarks The student will:					
1. remain with a group that is moving during transitions	90% accuracy across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
2. independently finish toileting task by: A. wiping with assistance B. pulling up pants	90% accuracy across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
3. wash and dry hands following a picture schedule with up to 3 verbal prompts to continue	90% accuracy across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
4. remain seated while eating with verbal prompts	90% accuracy across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			

Student File Parent Teacher Ref V: Content of IEP SE 170 (7-00) Page 7 of 31 pages

INDIVIL ZED EDUCATION PROGRAM (IEP)
Section IV: ANNUAL GOAL AND SHORT-TERM OBJECTIVES/BENCHMARKS

Date of IEP Meeting: *10/15/01* ☒ Proposed Copy ☐ Approved Copy

Service Provider: *special education instructional team*

Student:

Area: *Functional Life Skills*

EACH MARKING PERIOD PARENTS WILL BE NOTIFIED IN WRITING CONCERNING PROGRESS ON ANNUAL IEP GOALS.
(See Attached Goal Criteria Addendum)

GOAL:	Procedure and Criteria for Completion	Scheduled Review Date	Date Reviewed	Result of Evaluation	Comments
continued					
Short-Term Objectives/Benchmarks: The student will:					
5. walk independently to a familiar location within a building	90% of the time across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
6. maintain indicating the need to toilet independently	100% across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			

Student File Parent Teacher Ref V: Content of IEP SE 170 (7-00) Page 8 of 31 pages

INDIVIL ZED EDUCATION PROGRAM (IEP)
Section IV: ANNUAL GOAL AND SHORT-TERM OBJECTIVES/BENCHMARKS

Date of IEP Meeting: 10/15/01 ☒ Proposed Copy ☐ Approved Copy

Service Provider: special education instructional team

Student:

Area: Social - Personal, Management

EACH MARKING PERIOD PARENTS WILL BE NOTIFIED IN WRITING CONCERNING PROGRESS ON ANNUAL IEP GOALS.
(See Attached Goal Criteria Addendum)

GOAL:	Procedure and Criteria for Completion	Scheduled Review Date	Date Reviewed	Result of Evaluation	Comments
will demonstrate social and personal management skills up to the kindergarten level	progress on or mastery of 15/15 short term objectives data collection	1/29/02 4/11/02 6/12/02 10/15/02			
Short-Term Objectives/Benchmarks The student will:					
1. follow a picture schedule for daily or "work" activities including 5 - 10 pictures with: A. verbal prompting B. without prompting	90% of the time across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
2. follow 2 step directions given to a small/large group for: A. routine activities (clean up, line up, pack up) B. instructional activities with visual cues	90% accuracy across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
3. attend to a presented task for 5 minutes in a small/large group by: answering questions, gathering & manipulating materials, attend during turn taking	90% accuracy across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
4. remain seated for a work task up to 10 minutes duration without prompts	90% accuracy across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			

INDIVIL ZED EDUCATION PROGRAM (IEP)
Section IV: ANNUAL GOAL AND SHORT-TERM OBJECTIVES/BENCHMARKS

Date of IEP Meeting: 10/15/01 ☒ Proposed Copy ☐ Approved Copy

Service Provider: special education instructional team

Student:

Area: Social - Personal, Management

EACH MARKING PERIOD PARENTS WILL BE NOTIFIED IN WRITING CONCERNING PROGRESS ON ANNUAL IEP GOALS.
(See Attached Goal Criteria Addendum)

GOAL:	Procedure and Criteria for Completion	Scheduled Review Date	Date Reviewed	Result of Evaluation	Comments
continued					
Short-Term Objectives/Benchmarks The student will:					
5. get an adult's attention by raising hand to: A. obtain assistance B. respond to a question	90% of the time across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
6. engage in play activities with appropriate eye gaze with 1-3 peers for 5 minutes on a daily basis to include: catch, hand games, songs/fingerplays, pretend play, board games, or free choice	90% accuracy with adult facilitation across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
7. choose a toy from a field of four and follow through with the choice for 5 minutes: A. with facilitation B. independently	90% accuracy across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
8. participate in small group games with 1-3 children for 2-5 minutes by: A. attending to games B. taking turn appropriately C. acknowledging whose turn it is (my turn/your turn)	90% accuracy across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			

INDIVIL ZED EDUCATION PROGRAM (IEP)
Section IV: ANNUAL GOAL AND SHORT-TERM OBJECTIVES/BENCHMARKS

Date of IEP Meeting: *10/15/01* ☒ Proposed Copy ☐ Approved Copy

Service Provider: *special education instructional team*

Student:

Area: *Social - Personal Management*

EACH MARKING PERIOD PARENTS WILL BE NOTIFIED IN WRITING CONCERNING PROGRESS ON ANNUAL IEP GOALS.
(See Attached Goal Criteria Addendum)

GOAL:	Procedure and Criteria for Completion	Scheduled Review Date	Date Reviewed	Result of Evaluation	Comments
continued					
Short-Term Objectives/Benchmarks The student will:					
9. imitate non-verbal actions when given an adult model (running, walking on a line, balance beam, up/down steps, jumping, skipping)	90% of the time across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
10. play "Simon Says" and/or "follow the leader" using actions (running, walinking on a line, skipping, jumping, walking on balance beam: A. adult model B. peer model	90% accuracy with adult facilitation across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
11. participate vedrbally throughout the day in a small group by: A. responding to direct questions B. sharing a personal experience C. asking relevent questions	90% accuracy using 3-4 word sentences across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
12. gain peer attention by: A. using peer's name and looking at them B. using peer's name and making verbal request (play with me) C. use appropriate social greetings	90% of the time across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			

JNTY PUBLIC SCHOOLS — DEPARTMENT OF SPECIAL ED'

INDIVII ZED EDUCATION PROGRAM (IEP)
Section IV. ANNUAL GOAL AND SHORT-TERM OBJECTIVES/BENCHMARKS

Date of IEP Meeting: *10/15/01* ☒ Proposed Copy ☐ Approved Copy

Service Provider: *special education instructional team*

Student:

Area: *Social - Personal Management*

EACH MARKING PERIOD PARENTS WILL BE NOTIFIED IN WRITING CONCERNING PROGRESS ON ANNUAL IEP GOALS.
(See Attached Goal Criteria Addendum)

GOAL:	Procedure and Criteria for Completion	Scheduled Review Date	Date Reviewed	Result of Evaluation	Comments
continued					
Short-Term Objectives/Benchmarks The student will:					
13. 1 time per day participate in verbal turn taking with peers in unstructured times for 2-3 turns	90% accuracy on topic with appropriate eye gaze across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
14. refrain from placing fingers, hands and other inappropriate objects in mouth	100% of the time across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
15. decrease perseverative "chatter" regarding irrelevant topics during instructional activities	50% below baseline across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			

INDIVIDUALIZED EDUCATION PROGRAM (IEP)
Section IV: ANNUAL GOAL AND SHORT-TERM OBJECTIVES/BENCHMARKS

Date of IEP Meeting: *10/15/01* ☒ Proposed Copy ☐ Approved Copy

Service Provider: *speech therapist*

Student:

Area: ***Language***

EACH MARKING PERIOD PARENTS WILL BE NOTIFIED IN WRITING CONCERNING PROGRESS ON ANNUAL IEP GOALS.
(See Attached Goal Criteria Addendum)

GOAL:	Procedure and Criteria for Completion	Scheduled Review Date	Date Reviewed	Result of Evaluation	Comments
will demonstrate correct use of targeted semantic, morphologic, syntactic, and pragmatics skills in the educational setting	progress on or mastery of 13/13 short term objectives data collection	1/29/02 4/11/02 6/12/02 10/15/02			
Short-Term Objectives/Benchmarks The student will:					
1. use adjective/noun combinations to describe objects and pictures (eg. big ball, wet towel)	85% accuracy verbal & visual cuing across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
2. make 1-3 appropriate spontaneous comments related to a play/therapy activity	85% accuracy verbal & visual cuing across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
3. demonstrate understanding of the concepts: in front, behind, side, next to	85% accuracy verbal & visual cuing across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
4. follow a 2 step direction involving familiar concepts, objects, and motor actions	85% accuracy verbal & visual cuing across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			

INDIVIDUALIZED EDUCATION PROGRAM (IEP)
Section IV: ANNUAL GOAL AND SHORT-TERM OBJECTIVES/BENCHMARKS

Date of IEP Meeting: *10/15/01* ☒ Proposed Copy ☐ Approved Copy

Service Provider: *speech therapist*

Student:

Area: ***Language***

EACH MARKING PERIOD PARENTS WILL BE NOTIFIED IN WRITING CONCERNING PROGRESS ON ANNUAL IEP GOALS.
(See Attached Goal Criteria Addendum)

GOAL:	Procedure and Criteria for Completion	Scheduled Review Date	Date Reviewed	Result of Evaluation	Comments
continued					
Short-Term Objectives/Benchmarks The student will:					
5. ask peers/adults simple questions related to topic of conversation	85% accuracy visual & verbal cues across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
6. use 3-4 word phrases to express negation in spontaneous speech (don't, not, no)	85% accuracy visual & verbal cues across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
7. discriminate plurals: A. identify object(s) B. name object(s)	85% accuracy visual & verbal cues across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
8. use regular past tense verb formations	85% accuracy for 10 vverbs 3 step picture stories across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			

INDIVID...ZED EDUCATION PROGRAM (IEP)
Section IV: ANNUAL GOAL AND SHORT-TERM OBJECTIVES/BENCHMARKS

Date of IEP Meeting: *10/15/01* ☒ Proposed Copy ☐ Approved Copy

Service Provider: *speech therapist*

Student:

Area: *Language*

EACH MARKING PERIOD PARENTS WILL BE NOTIFIED IN WRITING CONCERNING PROGRESS ON ANNUAL IEP GOALS.
(See Attached Goal Criteria Addendum)

GOAL:	Procedure and Criteria for Completion	Scheduled Review Date	Date Reviewed	Result of Evaluation	Comments
continued					
Short-Term Objectives/Benchmarks The student will:					
9. add information to clarify a previous comment or question when prompted to do so	85% accuracy visual & verbal cues across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
10. verbally request permission and wait for permission to be granted (may I have, may I go.., may I do..)	85% accuracy visual & verbal cues across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
11. play simple games with the clinician and/or other students	4 turns per game, 85% of the time with visual & verbal cues across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
12. respond to who, what, where, and when questions about pictures and short stories (4 - 5 sentences)	85% accuracy visual & verbal cues across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			

INDIVIL...ZED EDUCATION PROGRAM (IEP)
Section IV: ANNUAL GOAL AND SHORT-TERM OBJECTIVES/BENCHMARKS

Date of IEP Meeting: *10/15/01* ☒ Proposed Copy ☐ Approved Copy

Service Provider: *speech therapist*

Student:

Area: *Language*

EACH MARKING PERIOD PARENTS WILL BE NOTIFIED IN WRITING CONCERNING PROGRESS ON ANNUAL IEP GOALS.
(See Attached Goal Criteria Addendum)

GOAL:	Procedure and Criteria for Completion	Scheduled Review Date	Date Reviewed	Result of Evaluation	Comments
continued					
Short-Term Objectives/Benchmarks The student will:					
13. maintain the topic of conversation for 3 turns with an adult speaker	85% accuracy visual & verbal cues across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			

INDIVI[illegible]ZED EDUCATION PROGRAM (IEP)
Section IV: ANNUAL GOAL AND SHORT-TERM OBJECTIVES/BENCHMARKS

Date of IEP Meeting: *10/15/01* ☒ Proposed Copy ☐ Approved Copy

Service Provider: *speech therapist*

Student:

Area: *Articulation*

EACH MARKING PERIOD PARENTS WILL BE NOTIFIED IN WRITING CONCERNING PROGRESS ON ANNUAL IEP GOALS.
(See Attached Goal Criteria Addendum)

GOAL:	Procedure and Criteria for Completion	Scheduled Review Date	Date Reviewed	Result of Evaluation	Comments
will produce targeted sounds in words	progress on or mastery of 8/8 short term objectives data collection	1/29/02 4/11/02 6/12/02 10/15/02			
Short-Term Objectives/Benchmarks The student will:					
1. produce the /n/ sound in isolation and in words	80% accuracy mirror work, modeling, tactile cues across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
2. produce the /w/ sound in isolation and in words	80% accuracy mirror work, modeling, tactile cues across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
3. produce the /l/ sound in isolation and in words	90% accuracy mirror work, modeling, tactile cues across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
4. produce /k/ sound in final position in words	80% accuracy mirror work, modeling, tactile cues across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			

INDIVI[illegible]ZED EDUCATION PROGRAM (IEP)
Section IV: ANNUAL GOAL AND SHORT-TERM OBJECTIVES/BENCHMARKS

Date of IEP Meeting: *10/15/01* ☒ Proposed Copy ☐ Approved Copy

Service Provider: *speech therapist*

Student:

Area: *Articulation*

EACH MARKING PERIOD PARENTS WILL BE NOTIFIED IN WRITING CONCERNING PROGRESS ON ANNUAL IEP GOALS.
(See Attached Goal Criteria Addendum)

GOAL:	Procedure and Criteria for Completion	Scheduled Review Date	Date Reviewed	Result of Evaluation	Comments
continued					
Short-Term Objectives/Benchmarks The student will:					
5. produce /g/ sound in the final position in words	80% accuracy mirror work, modeling, tactile cues across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
6. produce the /ŋ/ sound in all positions in all words and sentences	80% accuracy mirror work, modeling, tactile cues across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
7. produce the vowel phonemes /e/, /u/, /ʌ/, /ɪu/, /oi/	80% accuracy mirror work, modeling, tactile cues across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
8. imitate vowel - consonant strings of increasing length and complexity	80% accuracy mirror work, modeling, tactile cues across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			

INDIVIL ZED EDUCATION PROGRAM (IEP)
Section IV: ANNUAL GOAL AND SHORT-TERM OBJECTIVES/BENCHMARKS

Date of IEP Meeting: *10/15/01* ☒ Proposed Copy ☐ Approved Copy

Service Provider: *speech therapist*

Student:

Area: *Oral - Motor*

EACH MARKING PERIOD PARENTS WILL BE NOTIFIED IN WRITING CONCERNING PROGRESS ON ANNUAL IEP GOALS.
(See Attached Goal Criteria Addendum)

GOAL:	Procedure and Criteria for Completion	Scheduled Review Date	Date Reviewed	Result of Evaluation	Comments
will use oral motor movements necessary to produce intelligible speech	progress on or mastery of 4/4 short term objectives data collection	1/29/02 4/11/02 6/12/02 10/15/02			
Short-Term Objectives/Benchmarks The student will:					
1. allow deep pressure to be applied to the articulators for up to 15 seconds	70% accuracy mirror, food, oral motor toys across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
2. lift tongue to the alveolar ridge	70% accuracy mirror, food, oral motor toys across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
3. move tongue in imitation and on command: A. in and out of mouth B. side to side of mouth	70% accuracy mirror, food, oral motor toys across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
4. identify articulator being touched (lips, teeth, tongue, cheek) without a visual cue	70% accuracy food, oral motor toys across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			

INDIVIL ZED EDUCATION PROGRAM (IEP)
Section IV: ANNUAL GOAL AND SHORT-TERM OBJECTIVES/BENCHMARKS

Date of IEP Meeting: *10/15/01* ☒ Proposed Copy ☐ Approved Copy

Service Provider: *occupational therapist*

Student:

Area: *Fine Motor*

EACH MARKING PERIOD PARENTS WILL BE NOTIFIED IN WRITING CONCERNING PROGRESS ON ANNUAL IEP GOALS.
(See Attached Goal Criteria Addendum)

GOAL:	Procedure and Criteria for Completion	Scheduled Review Date	Date Reviewed	Result of Evaluation	Comments
A. will demonstrate improved functional shoulder, arm, and hand control for greater success with fine motor classroom manipulatives	progress on or mastery of 7/7 short term objectives	1/29/02 4/11/02 6/12/02 10/15/02			
Short-Term Objectives/Benchmarks The student will:					
1. stabilize with one hand while using other to complete the following tasks: A. color within shapes B. pour liquid from container into large cup C. open and close assorted lids	4/5 times with 1-2 verbal prompts data collection	1/29/02 4/11/02 6/12/02 10/15/02			
2. using dominant hand, will follow peg designs on pegboard involving crossing the midline	3/5 times with 1-2 verbal prompts data collection	1/29/02 4/11/02 6/12/02 10/15/02			
3. demonstrate improved coordination by catching a playground ball	3/3 times with 1-2 verbal prompts data collection	1/29/02 4/11/02 6/12/02 10/15/02			
4. pick up small manipulatives (pennies, stick pegs, knobbed pegs) using only the thumb, index and middle fingers	100% of the time data collection	1/29/02 4/11/02 6/12/02 10/15/02			

INDIVID ZED EDUCATION PROGRAM (IEP)
Section IV: ANNUAL GOAL AND SHORT-TERM OBJECTIVES/BENCHMARKS

Date of IEP Meeting: 10/15/01 ☒ Proposed Copy ☐ Approved Copy

Service Provider: occupational therapist

Student:

Area: Fine Motor

EACH MARKING PERIOD PARENTS WILL BE NOTIFIED IN WRITING CONCERNING PROGRESS ON ANNUAL IEP GOALS.
(See Attached Goal Criteria Addendum)

GOAL:	Procedure and Criteria for Completion	Scheduled Review Date	Date Reviewed	Result of Evaluation	Comments
goal A. continued					
Short-Term Objectives/Benchmarks The student will:					
5. demonstrate a radial pincer grasp to handle snaps and clothespins	4/5 times with 3-4 verbal prompts data collection	1/29/02 4/11/02 6/12/02 10/15/02			
6. using preschool scissors and positioning from an adult, will cut on straight and curved 3 inch bold lines within 1/4 inch	4/5 times with 3-4 verbal prompts data collection	1/29/02 4/11/02 6/12/02 10/15/02			
7. using a radial lateral grasp on a tool, will imitate a circle and cross	5/5 times with 1-2 verbal prompts data collection	1/29/02 4/11/02 6/12/02 10/15/02			

Student File Parent Teacher Ref V: Content of IEP SE 170 (7-00) Page 21 of 31 pages

INDIVIL ZED EDUCATION PROGRAM (IEP)
Section IV: ANNUAL GOAL AND SHORT-TERM OBJECTIVES/BENCHMARKS

Date of IEP Meeting: 10/15/01 ☒ Proposed Copy ☐ Approved Copy

Service Provider: occupational therapist

Student:

Area: Self Care

EACH MARKING PERIOD PARENTS WILL BE NOTIFIED IN WRITING CONCERNING PROGRESS ON ANNUAL IEP GOALS.
(See Attached Goal Criteria Addendum)

GOAL:	Procedure and Criteria for Completion	Scheduled Review Date	Date Reviewed	Result of Evaluation	Comments
B. will show improved independence in self care skills	Progress on or mastery of 5/5 short term objectives	1/29/02 4/11/02 6/12/02 10/15/02			
Short-Term Objectives/Benchmarks The student will:					
1. put on and pull off shirt with self-correction	100% with 1-2 verbal prompts data collection	1/29/02 4/11/02 6/12/02 10/15/02			
2. put on lower body clothing	100% with 1-2 verbal prompts data collection	1/29/02 4/11/02 6/12/02 10/15/02			
3. put on shoes and socks	100% with stand by assistance with only initial prompt data collection	1/29/02 4/11/02 6/12/02 10/15/02			
4. independently self feed with a spoon and fork	75% of bites data collection	1/29/02 4/11/02 6/12/02 10/15/02			

Student File Parent Teacher Ref V: Content of IEP SE 170 (7-00) Page 22 of 31 pages

Section IV: ANNUAL GOAL AND SHORT-TERM OBJECTIVES/BENCHMARKS

Date of IEP Meeting: 10/15/01 ☒ Proposed Copy ☐ Approved Copy

Student:

Area: *Self Care*

Service Provider: *occupational therapist*

EACH MARKING PERIOD PARENTS WILL BE NOTIFIED IN WRITING CONCERNING PROGRESS ON ANNUAL IEP GOALS.
(See Attached Goal Criteria Addendum)

GOAL:	Procedure and Criteria for Completion	Scheduled Review Date	Date Reviewed	Result of Evaluation	Comments
Goal 8. continued					
Short-Term Objectives/Benchmarks The student will:					
3. successfuly manipulate the following fasteners on and off self A. unbutton large buttons 4/4 B. button large buttons 4/4 C. unsnap coat or jacket 4 snaps D. snap on coat 4 snaps	with physical assist and 1-2 verbal prompts data collection	1/29/02 4/11/02 6/12/02 10/15/02			

Section IV: ANNUAL GOAL AND SHORT-TERM OBJECTIVES/BENCHMARKS

Date of IEP Meeting: 10/15/01 ☒ Proposed Copy ☐ Approved Copy

Student:

Area: *Sensory Motor*

Service Provider: *occupational therapist*

EACH MARKING PERIOD PARENTS WILL BE NOTIFIED IN WRITING CONCERNING PROGRESS ON ANNUAL IEP GOALS.
(See Attached Goal Criteria Addendum)

GOAL:	Procedure and Criteria for Completion	Scheduled Review Date	Date Reviewed	Result of Evaluation	Comments
C. to demonstrate the use of sensory information to understand and effectively interact with people and objects in school	Progress on or mastery of 2/2 short term objectives	1/29/02 4/11/02 6/12/02 10/15/02			
Short-Term Objectives/Benchmarks The student will:					
1. participate in various tactile activities (such as sand, clay, glue, fingerpainting, food preparation, and finger feeding)	without behavioral overreactions, 80% of the time data collection	1/29/02 4/11/02 6/12/02 10/15/02			
2. accept direct and incidental touch (head, hair, mouth)	without verbal, physical, or behavioral overreaction 100% of the time data collection	1/29/02 4/11/02 6/12/02 10/15/02			

JNTY PUBLIC SCHOOLS — DEPARTMENT OF SPECIAL EDU

INDIVID ZED EDUCATION PROGRAM (IEP)
Section IV: ANNUAL GOAL AND SHORT-TERM OBJECTIVES/BENCHMARKS

Date of IEP Meeting: *10/15/01* ☒ Proposed Copy ☐ Approved Copy

Service Provider: *occupational therapist*

Student:

Area: *Motor Planning*

EACH MARKING PERIOD PARENTS WILL BE NOTIFIED IN WRITING CONCERNING PROGRESS ON ANNUAL IEP GOALS.
(See Attached Goal Criteria Addendum)

GOAL:	Procedure and Criteria for Completion	Scheduled Review Date	Date Reviewed	Result of Evaluation	Comments
D. will demonstrate improved eye regard and motor planning abilities for greater independence in the school setting	Progress on or mastery of 3/3 short term objectives	1/29/02 4/11/02 6/12/02 10/15/02			
Short-Term Objectives/Benchmarks The student will:					
1. with sensory input, will remain focused on activity for 5-10 minutes with one verbal prompt	4/5 times data collection	1/29/02 4/11/02 6/12/02 10/15/02			
2. follow through on 3 step obstacle course involving movement changes to body	3/5 times with 1 physical prompt and 1-2 verbal cues	1/29/02 4/11/02 6/12/02 10/15/02			
3. visually scan from left to right to follow assorted patterns with manipulatives	4/5 times with 1-2 verbal prompts	1/29/02 4/11/02 6/12/02 10/15/02			

Student File Parent Teacher Ref V: Content of IEP SE 170 (7-00) Page 25 of 31 pages

JNTY PUBLIC SCHOOLS — DEPARTMENT OF SPECIAL EDU

INDIVID ZED EDUCATION PROGRAM (IEP)
Section IV: ANNUAL GOAL AND SHORT-TERM OBJECTIVES/BENCHMARKS

Date of IEP Meeting: *10/15/01* ☒ Proposed Copy ☐ Approved Copy

Service Provider: *physical therapist/ special education instructional team*

Student:

Area: *Gross Motor*

EACH MARKING PERIOD PARENTS WILL BE NOTIFIED IN WRITING CONCERNING PROGRESS ON ANNUAL IEP GOALS.
(See Attached Goal Criteria Addendum)

GOAL:	Procedure and Criteria for Completion	Scheduled Review Date	Date Reviewed	Result of Evaluation	Comments
will safely and independently access all aspects of his educational environment	Progress on or mastery of 4/4 short term objectives falls tracking log therapist/teacher consult	11/6/00 1/23/01 3/26/01 6/12/01			
Short-Term Objectives/Benchmarks The student will:					
1. consistently and spontaneously use an alternating foot pattern with or without the handrail while going up and down the stairs with his classmates	100% close adult supervision across data collectors	11/6/00 1/23/01 3/26/01 6/12/01			
2. be able to walk along the 5" balance board (low to the floor) using a true tandem (positive step length) gait pattern	100% close adult supervision across data collectors	11/6/00 1/23/01 3/26/01 6/12/01			
3. be able to go up and down the bus steps using either a marking time pattern or alternating feet with one hand on the rail	100% close adult supervision across data collectors	11/6/00 1/23/01 3/26/01 6/12/01			
4. maintain proper postural alignment in sitting	at least 5 minutes with 90% accuracy across data collectors	11/6/00 1/23/01 3/26/01 6/12/01			

Student File Parent Teacher Ref V: Content of IEP SE 170 (7-00) Page 26 of 31 pages

INDIVID ZED EDUCATION PROGRAM (IEP)
Section IV: ANNUAL GOAL AND SHORT-TERM OBJECTIVES/BENCHMARKS

Date of IEP Meeting: *10/15/01* ☒ Proposed Copy ☐ Approved Copy

Service Provider: *APE teacher and Staff*

Student:

Area: *Adapted PE*

EACH MARKING PERIOD PARENTS WILL BE NOTIFIED IN WRITING CONCERNING PROGRESS ON ANNUAL IEP GOALS.
(See Attached Goal Criteria Addendum)

GOAL:	Procedure and Criteria for Completion	Scheduled Review Date	Date Reviewed	Result of Evaluation	Comments
will demonstrate skills targeting movement activities as outlined in the CCPS Essential Elements Curriculum	progress on or mastery of 7/7 short term objectives data collection	1/29/02 4/11/02 6/12/02 10/15/02			
Short-Term Objectives/Benchmarks The student will:					
1. run/walk a distance of 3 laps in the gymnasium maintaining a continuous run for at least 15 feet	60% of the distance with verbal cues and physical prompts across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
2. jump off both feet a minimum of 2 inches: A. with verbal cues and physical support B. independently	5/5 trials across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
3. demonstrate throwing with a dominant hand 5 times while rotating the hip and shoulders during the pre-throw pattern	3/5 throws across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
4. demonstrate catching an underhand tossed ball 5 times while maintaining an extension of the arms and hands in preparation of the catch	60% of attempts teacher observation and documentation	1/29/02 4/11/02 6/12/02 10/15/02			

Student File Parent Teacher Ref V: Content of IEP SE 170 (7-00) Page 27 of 31 pages

NTY PUBLIC SCHOOLS (DEPARTMENT OF SPECIAL EDU

INDIVID ZED EDUCATION PROGRAM (IEP)
Section IV: ANNUAL GOAL AND SHORT-TERM OBJECTIVES/BENCHMARKS

Date of IEP Meeting: *10/15/01* ☒ Proposed Copy ☐ Approved Copy

Service Provider: *APE teacher and Staff*

Student:

Area: *Adapted PE*

EACH MARKING PERIOD PARENTS WILL BE NOTIFIED IN WRITING CONCERNING PROGRESS ON ANNUAL IEP GOALS.
(See Attached Goal Criteria Addendum)

GOAL:	Procedure and Criteria for Completion	Scheduled Review Date	Date Reviewed	Result of Evaluation	Comments
continued					
Short-Term Objectives/Benchmarks The student will:					
5. walk on toes a distance of 15 feet A. with verbal cues and physical support B. independently	80% of distance of 15 feet across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
6. slide/side-step to the right a distance of 15 feet A. with verbal cues and physical support B. independently	60% of distance of 15 feet across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			
7. slide side-step to the left a distance of 15 feet A. with verbal cues and physical support B. independently	60% of distance of 15 feet across data collectors	1/29/02 4/11/02 6/12/02 10/15/02			

Student File Parent Teacher Ref V: Content of IEP SE 170 (7-00) Page 28 of 31 pages

DEPARTMENT OF SPECIAL EDU

Date: 10/15/01

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ACCOMMODATING, EXCUSING, AND EXEMPTING STUDENTS IN MARYLAND ASSESSMENT PROGRAMS

The following MSDE-approved assessment modifications are to be made in this student's *instructional program*, Maryland Functional Tests, Maryland School Performance Assessments, Norm Referenced Testing, and/or the High School Assessments (exemptions must be justified in the IEP Committee Report).

Test	I. Scheduling				II. Setting				III. Equipment				IV. Presentation				V. Response				Status to Date on - MFT's & HSA's
	MFT	MSPAP	NRT	HSA	MFT	MSPAP	NRT	HSA	MFT	MSPAP	NRT	HSA	MFT	MSPAP	NRT	HSA	MFT	MSPAP	NRT	HSA	MFT
Reading (MFT/MSPAP/NRT)																					
Math (MFT/MSPAP/NRT)																					
Writing (MFT/MSPAP/NRT)																					
Citizenship (MFT)																					
Language Arts (MSPAP/NRT)																					
Science (MSPAP/NRT)																					
Social Studies (MSPAP/NRT)																					
Algebra (HSA)																					
Biology (HSA)																					
English (HSA)																					
Other (Local Assessment)																					

3-part W - Student File Y - Parent P - Teacher Ref: VI: IEP Committee Procedures Page ___ of ___ pages SE170a (1/00)

COUNTY PUBLIC SCHOOLS

INDIVIDUALIZED EDUCATION PROGRAM (IEP)

Name: _____

Alternative Assessment (Example: IMAP)

COUNTY PUBLIC SCHOOLS — DEPARTMENT OF SPECIAL EDUCATION

INDIVIDUALIZED EDUCATION PROGRAM (IEP) | Student:

Date of IEP: 10/15/01 | [x] Proposed Copy | [ ] Approved Copy

SECTION V. LEAST RESTRICTIVE ENVIRONMENT (LRE) AND SUMMARY OF SERVICES

What modifications, including supplementary aids and services are required to facilitate participation in the educational program?

Modified curriculum — Sensory diet throughout the day

Small student teacher ratio

1:1 instruction and assistance as needed

Picture symbols/picture schedules

Limit distractions in the environment as appropriate

Modified seating as appropriate

Assistive technology as needed to access instruction – adapted keyboard, rubber stamps

Areas	Instructional Services to be Provided/Provider	Hrs/Week	Environment Code(s)	Dates of Initiation (implementation and Anticipated Duration M/D/Y	M/D/Y	M/D/Y	M/D/Y
Functional life Skills	special education instructional team	20.5	D/B	10/15/01	6/12/002	8/26/02	10/15/02
Math	Special education instructional team		D	10/15/01	6/12/002	8/26/02	10/15/02
ading	special education instructional team		D	10/15/01	6/12/002	8/26/02	10/15/02
ocial – Personal Mgt.	special education instructional team		D/B	10/15/01	6/12/002	8/26/02	10/15/02
Adapted PE	PE instructional team	.5	D/B	10/15/01	6/12/002	8/26/02	10/15/02
Lunch recess art music PE	Regular education setting with support	8	B	10/15/01	6/12/002	8/26/02	10/15/02
[redacted]	Related Services (including transportation to be provided) [redacted]						
[redacted]	Physical therapy	consult	C	10/15/01	6/12/002	8/26/02	10/15/02
[redacted]	Speech/language therapy	2	C	10/15/01	6/12/002	8/26/02	10/15/02
[redacted]	Occupational therapy	1.5	C	10/15/01	6/12/002	8/26/02	10/15/02
[redacted]	Special transportation	5		10/15/01	6/12/002	8/26/02	10/15/02
[redacted]							
[redacted]							
[redacted]							
Total Hours/Week of Special Education and Related Services 37.5				Percent of Time in Regular Education 24%			

ENVIRONMENT CODES:

A – Regular Education with supplementary aids and Services
B – Regular Education with supplementary aids and Services
C – Itinerant services
D - Separate class in regular school
E - Separate school – public
F - Separate school - private

Any code other than A-C requires written justification in "Additional Comments" section of the "IEP Committee Meeting Report."

3 Part W - Student File Y - Parent P - Teacher Re: VI: IEP Committee Procedures Page 8 of pages 31 SE170 (10/99)

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INDIVIDUALIZED EDUCATION PROGRAM (IEP) Date of IEP: 10/15/01

Student: _____ X☐ Proposed Copy ☐ Approved Copy

PARENT INFORMATION / CERTIFICATION (Please check the items and sign below)

☐ I understand and consent to the transmission of information to the Maryland State Department of Education. This information will be used for accounting purposes as well as monitoring and evaluation activities.

☐ I have a AProcedural Safeguards - Parental Rights booklet and my rights have been explained to me and my questions answered. Extended School Year (ESY) Services were discussed.

☐ If my child is at least in third grade (or above) or is at least 9 years old (or older), the requirements for a Maryland high school diploma have been explained to me along with my child=s progress in meeting these requirements.

☐ I choose to accept Service Coordination for Children with Disabilities Case Management. I understand that the purpose of this service is to assist in gaining access to needed medical, social, educational, and other services. I understand that this service does not restrict or otherwise affect my child=s eligibility for other Medical Assistance benefits. At this time, I agree with case manager(s) recommended by the school system. I understand that if I wish to change the case manager(s) in the future, I can call the school system to make the change.

My child ☐ is ☐ is not medical eligible.
If my child is eligible, his/her MA# is _____

I give my consent for service coordination to be provided by: _____ (Facilitator) _____ (Case Manager)

_____ **Parent Signature** _____ **Date**

Signature / position of IEP team members who participated in IEP development / review:	Initials / Date indicating IEP approval: Initial	Date of Approval
Administrator / designee _____	_____	10/15/01
Special Educator _____	_____	10-15-01
Parent / Guardian _____	_____	_____
Student _____	_____	_____
Other (specify) _____ Position _____	_____	10/16/01
Other (specify) _____ Position _____	_____	10/15/01 10-15-01
Other (specify) _____ Position _____	_____	10/15/01
Other (specify) _____ Position _____	_____	10/15/01
Other (specify) _____ Position _____	_____	10/15/01

10/15/01
10/15/01
10/15/01

determined not to sign the IEP that she participated, or
tial indicating approval of the proposed IEP.